A DIRECTION

or

Preparatiue to the ſtudy of the Law:

Wherein is ſhewed, what things ought to be obſerued and *vſed of them that are addicted to* the ſtudy of the Law, and what on the contrary part ought *to be eſchewed and* auoyded.

Fulbeck

AT LONDON
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Anno Dom. 1620.

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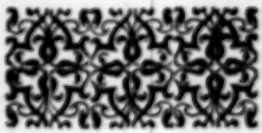
Fulbecke. William.



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¶ The contents of the *seuerall Chapters.*

CHapter 1. Of the worthines and excellencie of the Law.

Chapter 2. Of the good qualities wherewith the Student of the Lawe ought to be furnished.

Chapter 3. Of the choice which the student of the Law ought to make in his studie.

Chapter 4. Certaine rules to bee obserued of the student in the reading of his bookes.

Chapter 5. Of the exercise and conference which the student ought to vse.

Chapter 6. That the vnderstanding of the student ought to bee proportionable to the intendement of the Law.

Chapter 7. That the student ought well to conceiue the reason and iustice of

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the Law in distinguishing and establishing the property and community of thinges.

Chapter 8. That the words or termes vsed in bookes of Lawe ought to bee vnderstood and applied as the Lawe doth expound and conceiue them. Whereunto is annexed a table of certaine wordes, in the interpretation whereof, the Common Lawe of this Realme, and the Ciuill Law do seeme to agree.

Chapter 9. What methode is to be vsed in handling and disposing matters of Lawe.

Lectiſsimis & generoſiſsimis iuuenibus in hoſpitijs curialibus connutritijs, & Iuris Anglicani ſtudio operam nauantibus aſſiduam. S.

SI Theophraſtum, vt ipſum nomen indicat, oratione diuinum, circumſcripta quadam ſpatia, & anguſti vmbraculorum circuli á frequenti auditorum corona, & publico iudicum conſeſſu detinuere: Si Socrates, quem ſapientiſsimum virum, Apollo ſapientiſsimus Ethnicorum Dæmon iudicauit, nihilo plura volumina edidit, quàm condidit, id eſt, nulla: mihi quidem generoſiſſimi iuuenes, non ſolùm in ſcribendi initijs, ſed in vmbilico etiam & crure valdè metuendum eſt, ne prima mediis, media vltimis, omnia omnibus, non appoſite reſpondeant: Qua enim parcè nimis traduntur deſiderium, qua prolixè faſtidium pariunt, vt medium quæſitum inuenire difficile, inuentum tenere difficillimum: Cum hanc

arduam sanè prouinciam primò ingressus fueram, istud me recreauit & sustentauit solatium. Qui curas suscipiunt grauiores si mansuetis ingenijs vti volunt iudicibus, eorum audere, est agere, velle est posse, velitari est vincere. Fateor in aliquibus tenùs, vltrà, plus vltra peruentum esse: Sed vel metam ipsam attingere, imò verò ad eam contendere, sudoris est & virtutis: Quanquam hoc AEuo, in hoc presertim Britanniæ Elysio, nihil in delitijs habetur præter meras orationis illecebras: mira certè quà placeant, vermiculata verba, nectareas phrases, eloquentiam Atticam exposcunt, omnia limata, arguta, sententiosa esse volunt, planè Aristippèi sunt singuli

præue sectum stomachantur ob vnguem

Quarè seria & submissa prece, mihi vehementèr obsecrandi estis insignissimi iuuenes, vt hic potiùs otij mei fœtus quám laboris fructus (vacatio enim hæc proxima quám sub æquinoctium autumnale Londini non admodùm inuitus egi, cum ad priuata studia & negotia multum superesset temporis, hanc vobis prolem peperit) sub candoris vestri radijs calorem & vires recipiat: cuius si

compos

compos fuerit, debebit ille quidem vigorem suum vobis, lucis vsuram mihi, fortunam mundo. Valete: Ex hospitio Graiano: pridie Nonas Septemb. Ann. salutis humanæ. 1599.

Vobis addictissimus
Guilielmus Fulbeckus.

OF THE WORthineſſe and excellencie of the Law.

The firſt Chapter.

AS nothing more encourageth the ſoldior to fight, and to giue forth apparant ſignes of valor, then the glorie and renowme which is gained by exploits of warr: ſo nothing is a greater ſpurre to the ſtudent of any Art or Science, then the iuſt reward of fame and commendation, which belongeth to thoſe, who by labour attaine to perfection in any praiſe worthy ſcience. For as nature rewardeth the Bee with hony, ſo Art recompenſeth the painfull ſtudent with riches, praiſe, or honour. And howbeit ſome men make ſmall account of praiſe or good report, as being in their owne conceit but an empty ſound, yet wiſe men haue thought and written, that a good name is better then Gold, [a] and that a mans credit is the fayreſt flower of his garden. Now if praiſe be due to Arts and Sciences, as being the beſt treaſure and

[a] Proverb. 22. Aym. conſ. 149 viſo proceſſu in fi.

endowment of the mind, religion only excepted, then surely the knowledge of the law may in the first place challenge prerogatiue of dignity, by whose righteous doome & decree it is prouided, ruled, & ordered, that all other sciences should haue their maintenance & support, in such plentiful & condigne maner, as by merit or equity doth to them of right appertaine. But euery art receiueth his commendation by the end & scope which it proposeth to it self. And the chiefe end or last marke of ỹ law aswel as other sciences is God his glory. But ỹ next & immediate end, which is allotted to it, is to administer iustice to all, & in that sence it may be called the rule of iustice: for religion, iustice, and law doe stand together, & are together trodde vnder foot by such as neither care for God, nor goodnes: such as are rehearsed by one of notable iudgement. [a] A wise man without workes, an old man without deuotion, a yong man without obedience, a rich man without almes, a woman without chastitie, a gentleman without vertue, a contentious christiã a proud begger, an vniust king, a negligẽt bishop, a cõgregation without discipline, a natiõ without law. But iustice is then rightly administred, when it is not sold. [b] When there is no respect of persons. [c] Whẽ hatred is away & conscience is present. [d] When rigor is tẽpered with mercy. [e] And iustice must be regarded of

[a] Cyprian de 12. abusõ.

[b] Can. venden. q. 3. Canon pauper 12. q. 3.

[c] Deuteron. 1.

[d] Can. sex. 23. q. 3.

[e] Can. omnis & seqn. can. discipli. 15. dist.

the

the law as the load-star is minded of the sea-man, for without it can be ne gouernment. An other end of the law is the good estate of ye people. For it is an *Aphorisme* amongst the lawes of the 12. tables: *Salus populi suprema lex esto:* Let the safety of the people be accompted the chief law.[f] And ye deserueth not the name of a law which hath no relation to publicke profit.[g] For *Hermogenes* said well ye euery law was made for the good & profit of men.[h] And *Plato* saith, that a Law-maker ought to haue regard of 3. things especially: namely, that the conueniēt liberty of ye comon weale may not be impeached by the laws, that they may preserue amity amongst ye people, and ye they may furnish thē with wisdome.[i] Wherefore they that dispise laws, haue no care of comō profit,[k] because they were made for comon vse,[l] & without law, which I interpret to be an order established by autority, nether house, nor city, nor natiō, nor mankind, nor nature, nor world can be.[m] And therfore *Cicero* saith, ye our ancestors were of such vertue & wisdome, ye in making of their laws they had no regard, but of publik good:[n] For they would not write any thing to hurt, and if they had written any such thinds, it would haue bin reiected as soone as it had bin vnderstood. It is manifest therefore that the end at which the Law doth ayme is the generall aduantage of common societie

f L.12. tabular. c.6.

g Cicer. 2. de legi.

h lib. 2. de stat homin.

i li 2. de legi.

k Cicæ. pro Cæcin.

l li. 2. de legi.

m Cicer. lib. 3 de legi.

n Cicer. lib. 1. de inuent.

in a iuſt maner diſtributed and dealt to euerie one. For, *non ſufficit bonum fieri niſi bene fiat*, it is not ſufficient to doe that which is good vnleſſe it be done in good ſort, and therefore let not any man, which vndertaketh this profeſſion lay conſcience aſide: for though the charge and calling be ſeculer, yet it muſt be religiouſly handled. For God is the author of the Law, and the reuenger of the abuſe thereof, The weight and meaſure, ſaith Solomon, are God his iudgments, and therfore if any man maintaine any wrong by colour or pretence of law let him know, that though man be hurt, yet God is offended, ye do not execute the iudgement of man, but of God, ſaith *Ioſaphat*. God is the beholder and vmpier of Counſailes and Iudgements, and ſurely if a man do well diſcharge this weightie and excellent function, there is no man of any religious habit or vocation in higher place or greater reckoning with God. So much the more are they to bee reprooued, who exerciſe ſychophancie, fraud & caueling in the handling of cauſes, being wreſters of Lawes, and wringers of money, whoſe conqueſt in bad cauſes maketh them triumph as much as Romulus did when hee had killed his brother: nay as Atreus did when he had cõpaſt ỹ death of his brother Thyeſtes, boaſting and glorying, [a] *nunc parta vera eſt palma, nunc meas laudo manus*, Now haue I gotten an honorable

Prou. 16.

Chron. 2. c. 19.

a Senec. in Thy.

norable victorie, now I praise my handie worke, but they in whom conscience beareth stroke are farre otherwise addicted, and shalbe hereafter otherwise rewarded. Nay euen in their life time do they possesse ẏ ensignes of authoritie & dignitie, & by good right may they challenge many speciall fauors, immunities & indulgences. Constantine the Emperor gaue to the professors of the imperial Lawes, full & perfect freedome from all collaterall charges, taxes, and other burdens of the cōmon weale [p] and he decreed also that certain yeerely pensions should be paid vnto them out of the Treasury, [q] & the Emperor Valent. would haue thē which by the space of xx. yeres were professors of the law, to be illustrated by ẏ name of Comites, a name of excellent dignity. [r] Many othere priuiledges & benefits are mentioned in the Ciuil law, which belong as well to Studients as to professors, and hereupon had that saying his originall.

Dat Galenus opes, dat sanctio Iustiniana:
Ex alijs paleas, ex istis collige grana. [s]

Neither hath England bin vnkind or strait handed to men of that coat and calling: for in olde time as I find in M. Plowden, who was credibly informed thereof, there were foure Reporters of the cases of Law, which were chosen men, and had a yerely stipend for their

p L. medic. 16 de profes. & medi.

q. D. L. medicos

r Lvnica & rubri. de profes. qui in vrbe Constantinopol. docent ex lege meruerunt. Comit. lib. 12. c. tit. 15.

s Angel. Aretin in § proœm institut.

paines and trauel therein, paied by the king.

¶ Plowd. in Epi. a les eſtudents de le cõmon ley.

¶ But some will say that God forbiddeth vs to contend. Who denieth that: but he doth not forbid to iudge ¶ determine controuerſies: ¶ there is great difference betweene iudging and contending: for though God do forbid thee to beat a poore trauelling man: yet he doth not forbid thee to bind vp his wound, when he is hurt and maimed of others. So though he doe greatly abhor the hatred, rancor, malice, and diſagreemẽt of men, yet he is wel pleaſed and contented ꝑ ſuch pernicious ¶ contagious diſeaſes ſhould be cured. Let him that condẽneth the fault, approue the remedy. One mãrageth with a burning deſire of reuenge: another cõueyeth to himſelfe another mans goods by craft, whom when charity ¶ duty cãnot bring into the right way, his diſloial dealing muſt be repreſſed by the ſeuerity of Iudges. *Moſes*, *Dauid*, *Solomon*, committed no ſin, when they cauſed wicked men to be rigorouſly puniſhed: ¶ though Chriſt do condemne a quarrelous ¶ reuengefull perſon, yet he leaueth to the Iudges their authority, whether they rule ¶ order cauſes by the lawes ¶ cuſtomes of nations, or by the law of *Moſes*, *Ioſeph*, *Daniel*, *Naaman*, the Centurion, did gouerne cõmon weales by the lawes of the heathen. Surely the politike lawes of kings and magiſtrates are greatly to be heeded ¶ regarded, which Chriſt himſelf allowed,

lowed, when he paid tribute to *Cæsar*. And the profession & practise of the knowledge of lawe is warranted by the exãple of great men, who would not haue born the names of professors, if the science had not contained in it singular wit, excellent wisdome, & profitable directions for the whole course of mans life. It is well knowne that the *Camilli*, the *Curij*, the *Fabritij*, the *Fabij*, the *Claudij*, the *Scipiones*, the *Crassi*, the *Iulij*, the *Ciceroes*, & the *Scevolaes* were singular men and singularly skilled in law. And to giue thẽ their proper appellation were lawyers. These men governed their cõmon weals not in the shadow, in darknes or corners, as ỹ *Grecians* did, but in the cleare light of the Sun and in the face of the world, vsing experience as a Pilot against the boysterous and turbulent affections of the people. And therefore *Virgil* when he distributeth ỹ seuerall sciences to seuerall countries appropriateth the science of governing common weales to the Romaines

Vit Æneid. 6.

Tu regere imperio populos Romane memento,
Parcere subiectis & debellare superbos.

Mind thou O Romaine men by law to guid,
To spare the meeke, and ouer-master pride.

But some accõpt it a matter of too great curiosity, ỹ the lawes wch should be plain & manifest to all should be reduced to an art obscured with difficult cases, shadowed with conceited

termes, and as it were, couered with cloudes, and wrapped in darknes: to whom I answere that it is very expedient, that there should be a certaine arte and science of the Law, generall rules & preceptes, and conuenient discourses. For the particuler things which do fall vnder the obseruation of law are infinite, & ỹ weakenes of mans memorie cānot tollerate the multitude of particuler lawes: and therefore it is conuenient that that which we call *æquum bonum*, which in plaine termes is nothing els but perfect reason, should be comprehended and deliuered in certaine generall preceptes, and Plato alleageth this for a reason [x] becau´e it is necessarie, that there should be *Regia disciplina* a princely science, for he suteth it with that name, which may by a generall censure, order and dispose of all things without regard of euery particuler circumstance. For the certaine knowledge of matters, it is good that the law should be bounded by certaine rules & limites: For a mā could not certainly know what were his owne, and what an other mans, vnles the Law should as it were by finger point, & shew vnto him, what, when, and how it were his, and therefore true is that saying of *Cicero*, [a] *Omnia incerta sunt cum a iure discessum est.* If you depart from Law there is no certaine state of any thing. And his opinion is in an other place, [b] that our inheritance rather cōmeth to

x Plat. in polit

a Cicer. lib. 9. Epist. famil.

b Cicer. in ora. pr. o Cæcin.

vs by the law, then by our auncestors: for though they doe giue it, or leaue it vnto vs, yet it is the law which doth settle it in vs, and doth preserue the possession thereof free and inuiolate vnto vs. Wherefore it is to good purpose, that the law should be definite in it selfe, and should consist of certaine conclusions which should be as the limits and periodes of the science, by the contemplation of which, a man may be instructed and sufficiently furnished for particuler causes and events: For the particuler case lyeth as it were embowelled, and is implicatively contayned in the generall learning, and there is nothing in the law which may not be reduced vnto some vniuersall *theoreme*, which may easily be conceyued and remembred, because it is generall. [c] And though the professors of the Law doe make particuler arguments of speciall causes, and do admire exāples or cases to the illustrating of that which they do principally handle, yet the Law it selfe is comprised within certaine rules. Neyther ought it to trouble vs, that the Law bookes are so huge, and large, & that there is such an ocean of reportes, and such a perplexed confusion of opinions, because the science it selfe is short and easie to one that is diligent, according to that saying: *Industria omnia seruia fiunt*, All thinges are seruants to diligence, or come at her command, and arte

[c] Marcell. 2. ff. de iur. & fact. ignor.

are

are not to be estemed by the greatnes or smalnes of ꝑ bokes, but the goodnes of their rules. And though the lawes which do bind mens lines & mãers ought to be vnderstod of all, ꝑ their ꝓscript being knowē, men may decline from ꝑ which is forbidē, & follow that which is commanded: yet that may be done either by their owne means, or by ꝑ meãs of others: & if a mans braine be no fit mould for ꝑ Law, let an other mans mouth be his teacher. Here commeth the name of Counsailor, because in doubtful causes he may resolue & giue counsel: Whereby appeareth aswell the necessity, as the excellent vse of the calling: for what can be more conuenient or of better oportunitie, thē that a man of experience should shew the way to one that is ignorant. It is therfore expediēt that there should be lawes writtē, & that such lawes should not be altered without vrgēt occasion: for it is a fonde parte to strine against ꝑ course & stream of lawes, & customes receiued. A great question it hath bin heretofore, whether common weals were better governed by written Lawes, or by the ꝓsent & voluntary conceit of the magistrate: this matter, because religion it selfe hath committed ciuil duties to the wisdome and ordering of man, ought to be measured by ꝑ examples of wise gouernors & by popular sense. What good cōmō weal hath there euer bin without written lawes, which haue bin vsed by the *Egyptians, Cretenſians, A-*

thenians, Romanes, & Iewes. The writing or the engrauing of lawes in Tables is a principall cause of the certainty of the same, & without certainty, it should be of smal credit: for what authority or force should it haue, if it did alwaies change lik ỳ Poms, or like *Vertumnus*: but when causes are decided by ỳ opiniõ & wil of ỳ Magistrate, the power of gouernment may be in ỳ hãds of such as be vnskilfull or wicked & so either for wãt of skil, or cõscience, Iustice may faile of her course. How often might the pretẽce & shew of iustice beguile vs? how often might iustice be peruerted by fauor or malice? But if Lawes were not generall, & should not sometimes restrain Magistrates & gouernors, great incõueniẽce would ensue: euen as great as happened in *Athens* by the violẽt dõmination of the 30. tiants, who whẽ they had cancelled and disanulled the lawes, did exercise a cõmon butchery and slaughter of good men: Wherefore, as in dangerous tempests the ship is not rashly cõmitted to the winds: but there is nẽde of a skilful Pylot by counning & carefulnes to gouern: so the wauering & passiõate mind of the Magistrate, must be ballasted and weighed downe by law, least his own priuate affections do driue him from doing Iusticeas from the heauen. *Aristotle* affirmeth, that God ruleth that common weals which is gouerned by a written Law, becaus the Lawes are the

champions

champions and defenders of conuenient liber-
tie, then which there is nothing more pleasant
in this life: for what thing can be more happy,
then to be free from the feare of iniury, & safely
to inioy the societie of men, and therefore he
would not haue the gouernment of the com-
mon weale to be committed to any one man,
though very vertuous, without the regiment
and direction of Lawes. Neither let any man
say, that I do sinisterly iudge of the natures &
dispositions of men, in that I account no man
of so approued and speciall vertue, & fidelity,
that the managing of common affaires may
be offered vnto him to order them at his will
and pleasure without the appointment & war-
rant of lawes: surely I could wish that euery
gouernor were a *Numa*: But yet I would
haue the law to be ioyned with ỹ Magistrate
in the act of gouernment. Neither do I fancy
or figure in my minde any happier common
weale, then such as may accord with the tenor
and progresse of humaine affaires. If a man
should imagine that the authoritie of gouern-
ment were in the hands of the Stoikes, such
as would neither be moued by hatred, nor fa-
uour, though they in other respects were very
vnfit to gouern, how shall their humors be sa-
tisfied, who had rather be gouerned by writte
lawes, then by vpright Magistrats: for such
is the madnes and frowardnes of some, that

they

they will not be contented with the equitie and faithfull dealing of the Iudges, but will still contend by the rigor, and dint of law, and will trie all extremitie, being often times more at iarres & at oddes with the Iudges, then with the aduerse partie: here the authority of Iudges will be weake, vnlesse the lawes publikely receyued do strengthen it: so that in the written lawes there is not onely a safegard for innocency against iniury, but also for the Magistrate against the importunitie of the people: But as wayfaring men whilest they trauaile are not afraide of going astray, when *Mercuries* image doth point out vnto them the way that they are to goe: so good men when a certaine law is proposed vnto them, when by it they know what euery man ought to perform what to auoyd, they are assured and do wholy repose them selues in the protection of lawes. To the intent that the *Hebrewes* might well agree, and haue good order amongest them selues, God did enact and establish certain lawes, that they might iudge by prescript, and rule, least the law being ambiguous, might procure dissentions. And other people & nations haue either by the tyrannous domination of Magistrates, or the outragious discord of the people bin enforced to receiue Lawes as the square and measure of their actions. In the Citie of *Athens* when there was a continuall debate

about

about the difficult points of ỹ law thẽ in force, there arose three factions of men, not of the worst sort, but yet not well agreeing in matters of state: the Citie by this meane being greatly molested, and the hartes of men being edged and exasperated by the festred sore and canckerworme of contention, the gouernment was committed to *Solon*: he surueying by depth of iudgement the weak, and impuissant estate of the Citie made Lawes, whereby peace and contentment were restored: And whẽ he saw, that these lawes were the sinewes of the good estate of the citie, he determined that whosoeuer should hold any iudiciall place, should in precise tearms take oath that he would iudge according to the Lawes. This was also the cause why the *Romanes* dyd flie to a written law: the Magistrates did arrogate & assume to much to themselues, the people did exceedingly grudge and murmure that their honest libertie was impeached by the maner of their ruling, and the best men were at variance in matters of Law: so that it was thought méete that some equall Lawes should be in force, whereby the rashnesse of the people, & the violence of ỹ Magistrates might be moderated: For this cause the Lawes called the Twelue tables were prescribed to the citie, which yoak was willingly receiued, because without lawes they knew their common weal could not prosper,

per, nor continue. And as there ought to be a certain forme of Lawes, so these lawes ought not to be altered or abrogated without great occasion, & the evident advantage of the cõmõ weale. There was a Law amongest them of *Locres*, that whosoever would make a motion or innouatius against any received law, should therof deliuer his mind, having an halter about his neck, & if it were agreed by the assembly, that the thing which he indeuored to perswade were for the good of the common weale, the man was safe, & received cõmendation: but if it were disallowed, and reiected as an vnprofitable admonition, he was streight way hanged and received death as the guerdon of his innouation. And in *Athens* there were a kind of mẽ called νομοφυλακες, who in all publike meetings did sit amõgest the chiefe Magistrates, & did put thẽ in mind not to decree any thing against the lawes inforce. Thus it is evident that both the making & maintayning of lawes is necessarie. And it is rightly said of *Cicero*, that the Law is as necessary for the gouernmẽt of a state, as the soule & mind is for the preseruation of the bodie, [d] this (saith he) is the bond of all dignities, and degrees, which are in the common weale, this is the foundatiõ of libertie, the fountaine of equitie. The will, coũsell, & decree of the Citie is contained in the lawes, as ẏ bodie can doe nothing without the soule:

[d] in orat. pro Cluentio.

so

so a citie without Law cannot vse her actions, power, or authoritie. The Magistrates are the ministers of Lawes, the Iudges are interpreters, the people are the Seruãts, that they may haue true libertie. The Law is thus defined by Cicero, [e] *Summa ratio insita à natura, qua inbeat ea qua facienda sunt, prohibeatque contraria*, A principall reason ingrafted in vs by nature, which commaundeth the things that are to be done, and forbideth the contrarie, and all the particuler and seuerall lawes of diuers nations, are but the brãches of this law: for the lawes be certain and cleere intelligences, and rules, whereby the mind is addressed to pursue that which is good, and to eschew the cõtrarie: and they offer to the mind the formes and *Ideaes* of vertue and dishonestie. So that in the sacred precepts of law, as in a christall glasse, a man may perceiue what he may doe with praise, what he cannot doe without infamie: for the common places, which be hãdled by diuers, of common duties, of that which is truly good, of that which is perfect happines, of the best estate of a commõ weale, do not so sufficiently qualifie and instruct the vnderstãding, as the law it selfe. But here I shalbe crossed by an other obiection, that great & tedious are the labors which are to be sustained in the study of the law. Surely there is nothing of weight or worth, which may be compassed without

e 3. lib. 1. de legi.

without pain and trauails, and yet if the paine be compared and ballanced with the profite, it is but as a fewe drops of haile to a whole showeer of Manna. What would not a towardly man do: what would he not vndertake by his wisedome and warines, to kéep all danger from the bodies, heads, and liues of the innocent: to preserue his memory from oblition, and scilence: to bée of great accompt amongst the greatest: to attaine to that knowledge, which is the highest of all humane artes and sciences: and though it were as hard a matter for a young gentleman to gaine the knowledge of the lawe, as it was for *Phaeton* to ascend vnto the Chariot of the Sunne, who ere hee could accomplish that, was to passe through vncouth wayes, and by the ghastly formes of deformed creatures, by the terrible Signes of the Bull, the Lyon, and the Scorpion[f], though (I say) a Student ought to haue all the law perfect, and to passe through a multitude of cases, iudgements, Statutes, arguments, treatises, comments, questions, diuersities, expositions, customes of courts, pleadings, moots, readings, and such like: yet sith there is no arte nor science, by which the common weale receiueth so great benefit: sith there is no course of life, no time of age, no estate of men, which can either florish or be without the safegard of Lawes, and sith the

[f] Ouid. Metamorph.

difficulty of the ſcience is rewarded by the dignitie, credit, and ample fortune which belongeth vnto it: the hope of them which employ themſelues in this ſtudie ought not to ware faint, nor their mindes to be daunted with the labour and paine, which all artes require: but they ought to bee incited and allured to proceed in their ſtudies by the excellent and honorable rewardes of the ſame.

Of the good qualities wherewith the Student *of the Law ought to* be furniſhed.

The ſecond Chapter.

BEcauſe many apply themſelues to the ſtudie of the Law, without deliberate conſideration of their qualities and ſufficiencie, ſo that many times they finde not that contentment, which otherwiſe they might inioy. It is very conuenient that they ſhould know what qualities are requiſite in him, who is to employ

ploy his tyme in the ſtudie of the Lawe: for as *Ariſtotle* ſayeth, [a] Rules and precepts haue not force in all, but the minde is to bee decked with good giftes, that it may take ioy in things that be truely good, and abhorre the contrarie. The firſt and chiefe thing that I doe require in him, is, to haue the true knowledge, and feare of God, without which his other knowledge is but as a ſword in the hand of a frantike perſon: and where the light of trueth is not, there is a darke and tenne-folde miſt about the minde. But where God is not, there is no trueth, there is no light, there is no Lawe. The ſoule and ſences, are but the inſtruments of his will, which hee bindeth and looſeth at his pleaſure. And if they turne from beholding him to the contemplation of any Arte and Science whatſoeuer, ſurely they effect nothing but their owne deſtruction: I knowe this is no pleaſant ſound to ſome daintie eares, who cannot tollerate any naming or mentioning of religion, which the Paganes, whome they make as preſidents of their prophane manners did not onely regarde, but in the verie front and beginning of their Lawes (ſuch was their reuerence) they preffixed a preface and caueat for the obſeruation and keeping of holy rites in a regardfull manner: *Ad diuos adeunto*

[a] Ariſtot. lib. 10. Ethico. ad Nichomach

caste, pietatem adhibento: qui secus faxit, deus ipse vindex erit: Let them goe to the worship of God with a chast minde: let them vse reuerence: God will bee the reuenger of him that doth otherwise. [b]. Some perhaps had rather heare a curious discourse handled by some Astrologer, whereby they might haue certaine notice and vnderstanding what complexion and constellation is most fit to enter into the studie of the Law: with such dregs they would haue their mind satisfied. They perhaps, will beleeue (for what is more credulous then fansie) that they which are borne vnder *Iupiter*, are not fit for the studie of the Lawe, as *Cocles* teacheth them, [c] that they which are borne vnder *Mercurie*, are of quicke conceit, but quickly vnconceited, some ripe and some rotten, especially if *Mars* bee ioined with *Mercurie* in the constellation, as it hapned according to the suggestion of some in *Hermogenes* the Sophist, who writ of Sophistrie in his youth like a graue old man, and was in his old age as a trifling boy. But they which are borne vnder *Saturne*, are said to bee more dull in the beginning, but in processe of time of more sound and deepe knowledge then others: surely I am not of opinion, that the soule and the powers thereof are subiect to the sway and motion of the planets. If I should thinke, that it were a substance

b Leg. 12. tabular. c. 1.

c Cocles in Physiognom.

stance flowing from the bodie, or so mingled with it, that it might be accompted a kind of blond, as some Phylosophers grossely conceiued, this might seeme vnto mee probable. [d] But I am fully and immoueably perswaded, that the soule commeth from aboue into this strange matter, wherein the body is compacted, and is of an incorporeall nature, which is not subiect to the impression of the senses. For when sickness affecteth the body, the soule is sound: and when the body is racked, the minde is free. Neither is it to bee marualled at, that it conformeth not it selfe to the change of the body, because some materiall parts of the body are not alwaie partakers of the change. Let a man go abroad in the most cold and freezing weather, yet his eyes will neuer bee frozen, let him stand by a most scorching fire, yet they will neuer feele heate. The strange and different substance of them from the other parts of the body, I take to be the cause. Now the Planets do worke only vpon corporall things, for their influence is of the same sort as the attractiue force of the Adamant, or the Geate, which cannot worke but vpon materiall things: and therefore I may well conclude, that the Starres do not qualifie the minde, but the body onely, which being a cotage of clay, must needs beare the wind and weather, the alteration and impres-

[d] Cicer. in Tusc. quest.

stion of the Planets. Wherfore let not any mã who aymeth at the knowledge of the Lawe as the marke of his desire, make any estimatiõ of these Physiognomicall fictions: let him not go to the house of *Mars*, nor to the spheare of *Mercury* for knowledge. *Si quis indiget sapientia, postulet a domino.* It any lacke wisdome, let him request it at the hands of God. e

e Iacob. c. 1.

He must likewise observe, that the way to the hight of knowledge is by humilities gate. Let not the increase of his skil make his mind to increase, and swell, after the maner of lofty spirited men, who when they know nothing, yet would seeme not to bee ignorant of anie thing. Euery auditor must be willing to heare who though he were a man of singular knowledge, yet gaue example of great modestie, by this censure, *Maxima pars eorum quæ scimus est minima eorum quæ ignoramus*, The greatest part of the things which wee knowe, will countervaile but the least part of the thinges which wee knowe not: as if a man should compare one hundred to one. But none doe more boast of knowledge, then the ignorant, as nothing soundeth more then emptie vessels: and they nourishing in their mindes a haughtie and ample opinion of their supposed abilitie, are so bewitched with selfe-loue, that they thinke they sucked

f In Analyti. posteriori. *Oportet discentem credere*, saieth *Aristotle*, f

eloquence

eloquence with their nurses milke, that the bees which are feined to sit vpon *Platoes* lips, did flie to their lips whilest that they were dreaming in the cradle: that they were able to teach old men before they had teeth: and triumphing in this conceit, they admire themselues, & disdaine others, aduancing their own doings, & discommending the fruitfull labours of other men, like apes, louing their deformed children, and like phantasticke Pygmaleons woing their owne deuises. If any thing be spoken of thē somtimes cleerkly, and acutely as they think, they make an inward applause vnto thēselues, & cherish their harts with this acclamation, *facete! laute! lepide! nihil supra!* but if any thing be spoken of others aptly and sensibly, they straightway inferre, *Quanto tu melius hoc innenisses Thraso!* But a discreete & aduised man, will iudge none to be so meane, but that he may learne somethīg of him: for though he know more than others, yet hee must thinke, that others knowe somewhat which he knoweth not. The best and the most graue man saith *Cicero*, will confesse, that hee is ignorant of many things. [f] And *Solon* was not ashamed to say, that in his old age he was a learner. [g] And *Iulianus* the Lawyer sayd, that though hee had one foot in the graue, yet he would haue another in the schoole. [h] The next thing I require in a Student is temperance,

f Cicer. Tusculan. 3.
g Cicer. in Catone maior.
h Apud Iulianum de fide commissa liberalis.

rance, which I do not take so strictly as *Aristotle* doth, who defineth it to bee a restraint from corporall pleasures, which are obiected to the sense of feeling [p], but would haue it so largely vnderstood as *Plato* [q], *Cicero* [r], and now of late time [s] *Scaliger*, and *D. Gentilis* haue taken it to bee, a restreint of the mind from all voluptuousnes and lust, as namely from couetousnes, excesse of diet, wantonnes, and all other vnlawfull delights. A student must in his dyet be temperate, and abstinent, for as *Musonius* saith, Continency in dyet is the step to wisedome. [t] A fat and full belly yeeldeth nothing to a man but grosse spirits, by which the sharp edge of the mind is dulled and refracted, and too much meate cast into the stomake doth ingender nothing but crudities and diseases. This measure must bee vsed in our dyet, that no more be taken then will suffice. *Seneca* prescribeth a good rule, [u] *Famem fames finiat*, Let hunger end hunger, which is nothing else in plaine termes, but that a man should rise with an appetite, being rather satisfied then filled. Yet he that feedeth more plenteously, is not to be reproued, if his body doe stand in neede of more copious nourishment, and a man must not so abstain, that the functions and duties of the minde and bodie be hindered. Good and moderate nourishment doth quicken the spirits, and they do

giue

p Aristoteles lib. Nicomachior. 2. & 3. & in li. magnor. morali.

q Plat. in Conuiui.

r Cicer. lib. officior.

s Scalig. li. 3. poetic. Alberic. Gentil. lib. de leg 3. c. 13.

t Stobæus de temperantia.

u Senec. epistol. 119.

gine strength to the braine, but that which is vnwholesome and immoderate doth stoppe, thicken, confound, and destroy them. As in diet, so in other things, it is good for a Student to haue the rule and mastery of his mind and appetite, neither so to let slip the reignes to his desire, that he will for any commodious respect, bring himselfe to shame and obloquie, and for a present aduantage, incurre a perpetuall discredit. *Plato* hath a sentence worthie of obseruation[x], *Et dicere & facere ea qua decent ad sobrium & prudentem hominem tantum pertinet*, To say and to do the things that are comely, belongeth onely to a sober and wise man. That example of rudenes vsed by certaine Florentine Embassadors, is to be auoided. *Iouius* reporteth it[y]. They were sent as Embassadeurs to *Charles* the fift, and Pope *Clement* the seuenth staying at *Bononia*, and being Merchants, carryed with them (such was thier extreame couetousnesse) certaine wares to make gaine of, thinking they should bee free from custome, as going vnder the name of Embassadors necessaries. But this being perceiued to the two great Estates, moued the Emperor to laughter, & the Pope to anger, who was a citizen of Florence. The Legates departed with infamy, which they well deserued for abusing so honorable a calling by such base indignitie, which may bee a war-

x Plato in Tim.

y Iouius lib. 28.

warning to all to preferre their credit before their greedy desires.

Diligence in the pursuing of any studie is of great weight and moment, and in the studie of the Lawe it hath principall force and effect, for the cases are many in number, which must bee read, remembred, and applyed, which cannot bee compassed but by extreame diligence. And whereas some pretending a lumpish idlenesse, would haue the Lawe measured with narrowe limits, and would haue the multitude of volumes, cases, rules, and diuersities abridged and made lesse, surely they giue large testimonie of their great desire of ease. But ease is a very badde medicine for difficultie, and their pretence is wholly repugnant to reason, yea to possibilitie. They that would haue fewe lawes, must procure that there bee fewe causes, and little businesse, which it is not possible for any to bring to passe. If it were possible for these fayne students to take away the infinite and the innumerable affayres and actions of men, then that which they require might sort to good effect. But that lyeth not in their power, and therefore they should surceasse their sluggish surmise. For this cause *Ludouicus Viues* is iustly reprehended of *Albericus Gentilis*, in that he held, that all things might

might bee finished by fewe Lawes, whom *Gentilis* [a] affirmeth, to fight against common experience. For if many contentions or controuersies should happen, which none can bridle or prevent, if the Lawe should not handle, discusse, and determine them all, the Lawe should doe iniurie, and it should not bee the hand-mayde of Iustice, it should not *Suum cuique tribuere*. So that in the Students minde this resolution must bee fixed, not to sinke vnder the burden, but with all conuenient industrie to followe his Studie neuer to bee wearie of paynes, nor to slacken his indeauour, sith nothing of price and accompt is purchased without great labour, by which hee may attayne to the knowledge of many excellent things more worthie of admiration, then praise. Neither is it seemely to pretende weakenesse of bodie, and tendernesse of complexion, when health and strength doe well serue, and may well bee imployed in Studie. *Ciceroes* body was neither of yron, nor of oake, yet hee was not broken, nor in manner altered by continuall nyght-watchings, noone-sittings, and morning-risings, by many labours, contemplations, and studies, by the great charge of his houshoulde, by the weightie care of the Common Weale, by writing many

[a] Albericus Gentilis dialogo primo de iuris interpretibus.

many bookes, and epistles without number, as *Cardanus* well obserueth. [b]. And why should any man despaire to doe that which another hath done, especially hauing the like disposition of minde, the like faculties and meanes to attaine to knowledge, and the like desire. This diligence doth chiefely shew it selfe in reading and hearing. It is not fit for him that heareth or readeth, to haue a minde wauering from the purpose, and as it were going on pilgrimage. A man is then sayd to floate in fancy, and to wander in thought, when hee doth not bend his minde to that which is handled, and when he is amongst his bookes in body, but not in minde, or when he is present at some reading, and doth not shew himselfe attentiue, but doth number the tiles of the house, or buildeth in the ayre, or doth nothing lesse than that which hee should do: but the force of the minde must bend it selfe to that thing only which is to be conceiued. For the power of our mind and vnderstanding is more strong when it is vnited, then when it is dispersed, and distracted into many parts.

Pluribus intentus minor est ad singula sensus.

[b] Lib. 4. de subtilitate tract. c. 16.

But as these things forenamed are of great consequence and value to the Student, so wisedome that rare and excellent vertue of the

the mind is of great importance, which I doe rather exact, then require in a Student, for without it nothing can bee done decently or perfectly: and surely to a Student of the law it doth specially appertaine, for it doth consist in the cunning discerning of the truth of every thing.[c]. And a Student ought not onely well to deliuer things conceiued, but well to iudge of them, and in this part standeth the best part of a Lawyer. It is the propertie of a wise man most sharpely to perceiue what is true, what is false in euery cause and controuersie, not to be deceiued nor inueigled, not to be vnconstant in opinion, nor ignorant in the circumstances of things. The ordinarie meane to attaine to wisedome, is to vse time and diligence sufficient for the consideration of things, to heare reasons on both sides contending in his mind as it were armed and professed enemies, not to iudge of any thing rashly or hastily, nor to giue a sleight censure of weightie matters. For as *Fabius* sayeth in Lyuye [d]. *Omnia non properanti clara certaque sunt, festinatio improuida ac caca est*, All things are plaine and certaine to him that is not rash nor headie. Haste is improuident, and blinde, which is therefore rightly termed of Plato, *Nouerca Scientiæ*, The stepdame of knowledge. [e]. And the Aetolian Magistrate sayd well, "That there is nothing so great an enemy

[c] Cicer. Offic. lib. 1.

[d] Liuius Lib.

[e] Platoin politic.

[ee] Liuius l.—

nemy to good aduise, as haste, which bringeth pennance swiftly, but warning too late, and without profite, because counsell hastily giuen cannat bee reuoked, neither can the thing which is disordered by hadde aduise, bee intierly restored or brought into order againe. But where a man taketh time sufficient, hee cannot bee saide to doe any thing rashly. Wherefore not vnfitly hath it beene defined by some to bee the knowledge of the opportunity of doing things aright, and the cause that all things bee well done, [f] and it hath not onely a stroake in worldly affayres, but euen in matters of religion: for by it a man may bee so directed, that hee may neither decline to superstition, nor to that which is contrary vnto it, namely, impiety or atheisme. And it is the leaual or compasse of all other vertues in the accidents and affaires of this life. It will shewe the times and measure of boldnesse and audacitie, least it turne to rashnesse and impudencie. It will so order Temperance the mother of order, that it may not bee accompted rudenesse or inciuility. It will guid Iustice which gouerneth all things, least it turne to cruelty: nay it will moderate it selfe, least it be termed craft or deceipt. By these effects the student may easily perceiue, how necessary it will be vnto him.

[f] Diogen. Laer in vit. Platonis. Cicer. lib. 1. officior.

The

The qualities aboue mentioned, doe so directly respect a Student, that they may bee numbred in the ranke either of adiuments, or ornaments. One thing yet remayneth, which is, to bee placed and raunged amongst the ornaments only, being a meere ornament, yet it doth as much adorne, as the other doe helpe: and that is curtesie or mildnesse, which doth as much decke and illustrate any gentleman, as the Dyamond doth the gold to which it is fastned, or as the chaine of the necke doth giue a lustre to the brauery of the other partes, it setteth in order, garnisheth and graceth the other giftes of the minde, without which they shoulde bee vnsauory, and want applause. I distinguish it from Ciuilitie called *Vrbanitas*, and ἀστειότης, or that is onely to bee seene in publique meetings and assemblies. but this may shewe it selfe within a mans priuate Walles, or Chamber, and may bee vsed betwixt man and man. Most loathsome and deformed are the manners of the Stoikes, who whilest in sowernesse of minde they seeke to ouercome mans nature, doe exceede it, and of men they become beastes. And such manners haue disgraced men of excellent abilitie. *Coriolanus* was by nature a Stoike, and his roughnes of maners is iustly & worthily reproued of *Dionys. Halicarnassæus* & *Cato* was both by nature and

& Dionys. Halicarnass. lib. 8.

and profession, whom for his bitter austerity *Erasmus* condemneth [h]. And surely I thinke that such rugged behaviour doth relish harshly, and is sometimes vnpleasant to them who by naturall inclination doe fauour it. Heare therefore a Stoike dispraysing a Stoike. *Cn. Piso* (saith Seneca) *fuit a multis vitijs integer, sed prauus, & cui placebat pro constantia rigor* [i]. Cn Piso was free from many faults, but yet a froward man, and was delighted with stifnes of mind in stead of constancy. *Florus* hath noted the currishnes of *Romulus* with a perpetuall blot of infamy, *Romulus ob asperitatem morum a Senatu discerptus est* [k]. Romulus for the roughnes of his maners was torne in pieces of the Senate. But mildnes is of that sweet and delectable nature, that it pearceth the stony harts of barbarous people, it affecteth their eies & eares, it bendeth the most stubborne and insolēt spirits, it findeth an easie way amongst swords, it ouercommeth wrath, and alayeth hatred [l]. This I commend to the student as a principal meane to gaine fauour, loue, & good entreatie.

h Erasmus in Encom. moriæ.

i Senec. lib. 1. de ira.

k Flor. lib. 1. histor.

l Valeri. Maxi. lib. 5. c. 1.

The

Of the choice which a Student of the Law ought to make in his ſtudie.

The third Chapter.

NOw that wee haue ſhewed what qualities are conuenient for him, who purpoſeth to gaine knowledge and credit by the ſtudie of the Law, it remaineth to giue him ſome taſte of that courſe which in purſuing his ſtudie hee may not vnprofitably obſerue. For though the way were plaine, yet to them that know it not, it is harde and difficult. And as the firſt yoake is to the younge Steere heauie, not becauſe he is not able to beare it, but becauſe he is vnacquainted with the carrying of it, ſo younge Students though they be in age and capacitie mature and perfect, yet becauſe they aduenture vpon a new enterprize whereof they neuer had triall, they are ſomewhat troubled at the firſt: yet in continuance of time, by labour and ſome direction of *Veterani* in the Art, they pierce through the thornie fence or barre of theſe great difficulties: but here let the Student take courage vnto him, and when the doore is opened, let him

not doubt to enter. As hee must not neglect time, which is a consuming treasure, so hee must make distinct choice of it, least omitting better opportunities, hee doe cast himselfe into the straites of time and necessities, whereby hee shall finde much incumbrance, and his proceedinges shall bee crossed by many interruptions. And surely as in all matters of moment, the place where a thing ought to be done is greatly to be regarded: so likewise the time wherein it is to be done. For the turning of all temporall affayres doth depende vpon these two hinges, and these circumstances doe either make or marre the substance of our actions. It hath been questioned of diuers whether the morning or the night be more conuenient time for the studie of the Law, which because it is no moderne doubt, but either part hath had fauorers and patrons in all ages, and to the end that by some clearenes of reason the truth of this matter may appeare, I will bestowe some paines in the opening of this point.

Marsilius Ficinus a man of excellent learning and iudgment doth by fiue reasons proue that a man should rather rise in the morning to studie, then watch in the night. [k] His first reason is borowed of the Astrologers, which he doth not greatly vrge, because he had small regarde of their vaine speculations: but admitting

k Marsilius Ficinus lib. de vita sana. c. 7.

mitting that they say to be true, he thus reasoneth: there be three planets which bee very favorable to Students in the course of their studies, *Sol*, *Venus*, and *Mercury*, all which in the night are most remote from our *Hemisphere*, and goe into the twelfth house of the heauens, which is called the prison, towarde the West. His second reason is this. The spirits of our bodies doe followe the state and disposition of the ayre. Now in the morning, when the Sunne riseth, the aire is subtilized and made thinne, pure, and free from all grosse vapours. But in the night time it is thickned, and corrupted with contagious exhalations, which pestelling the sences, doe pierce into the braine. Thirdly, the day was made at the first, for labour, and the night for rest, (and therefore it is said in the 104. Psalme, Thou makest darkenesse and it is night, wherein all the beastes of the Forrest creepe forth, when the Sunne ryseth, they retire and couch in their dennes. Then goeth man forth to his labour, vntill the euening.) And whilest the Sunne holdeth and containeth his race in our *Hemisphere*, with his beames hee doth open the poares and passages of our bodies, and from the center, to the circumference of the same, hee doth inlarge the humors and the Spirites which maketh vs more apt to labour and studie: but when hee departeth

rom vs then all these thinges are bound and straitned, and then we are driuen and prouoked to sleepe. Fourthly, it is very healthfull vnto vs to vse labour or study in the morning, which if it should be in the night the spirits being greatly wasted and consumed by the motion in the day time, the body becommeth weake, and so is vtterly vnfit for any kinds of labour. And he that giueth himselfe at that time to study, causeth the spirits to flie vp into the head, and they being so distracted, cannot yeelde sufficient seruice eyther to the head or to the stomache. Fiftely, if a man studis soone after supper, the nourishment is resolued into grosse vapors which doe fill the bodie and are very noysome obstupatiues to the senses. For the meate being destitute of heat and spirit, doth ware raw and doth putrifie in the stomache. So that the braine is offended and our studie greatly hindred and impeached. It may be added for a sixt reason, if any thing may be added to *Ficinus*. The spirits wherein all our agilitie and dexteritie doth consiste, by which the braine doth worke, are together with the other parts of the body refreshed and strengthened. So that in the morning they must needs bee more serviceable then at night. Seuenthly, the phantasie or imaginatiue part of the soule which helpeth greatly in studie, and principally in

the

the studie of the Lawe, is in the night time confounded and obscured. Lastly, the body in the night time wareth more dull, so that the minde cannot vse it as a conuenient instrument. For when the stomacke is full and stuffed with meate, the thicke ayre being round about vs, stopping the pores, the great store and abundance of humors is caried, as *Aristotle* saith[l] to the heade, where it sticketh for a time, and layeth as it were a lump of leade vpon the braine, which maketh vs drowsie and prone to slepe: then it descendeth by steppes or degrees, and comming into the other parts doth ingender sleepe. And it is the opinion of a learned Physitian, [m] that the nightly study is vnseasonable, and that it wearieth and weakneth students, making them leane and exhausting their bodies. For by late watchinges their vitall spirits through too much intention are weakened, and their native humiditie dried vp. *Demosthenes* did studie much by candle light, and therefore his orations were said to smell of the Lampe: but he did not begin to studie till the first entrance of the morning, and herein he did indeauor to excell euery man. But whosoeuer will followe *Demosthenes* in this, had need to be well aduised of the strength and constitution of his body and to examin.

Quid valeãs humeris ferre, & quid ferre recusent.

[l] Lib. de somno & vigil. c. 3.

[m] Lemnius lib. 1. de complexion. c. 9.

For nature must not bee oppressed, but measure and meane must bee vsed, least the stomache being made by too much fatigation vnable to digest the meate received, the peares of the bodie bee cleane worne out and extinguished. The whole Senate of Physitians doe call the morning howres, the golden howers, in regard that the bodie is then in best temper. This may suffice to perswade, that the morning is more fit for all kind of studie in generall, and by consequent for the studie of the Lawe. It hath been prooued by probable reasons, and by authoritie of wise men. If this will not serue, heare the voice of wisedome herselfe. I loue them that loue mee, and they that seeke mee earely shall finde mee. [n] I haue dwelt the longer in this question, because it is very expedient for a Student, to knowe the best time of his studie, which if it bee vsed in season, may prosper, and take good effect: otherwise his labour may bee vnprofitable, God (sayth) Solomon hath made all things good in their time. [o] And Ecclesiasticus woulde haue euery man to obserue time. [p] This therefore I will no longer handle, being a matter plaine, but will satisfie the Student in other difficulties, which are more frequent and doubtfull, and are occasions, that many which doe enter into this studie doe breake off their course

n Prouer. c. 8. ver. 17.

o Eccles. c. 3.

p Eccles. c. 4.

course, and bid the Law farewell. The bookes of Law, say they, are not pleasant to reade, the wordes or termes are harshe and obscure, the stile no whit delightfull, the methode none at all. It is a science voide of all proper definitions, artificiall divisions, and formall reasons. To answere this cauill, (for I cannot blanch it whiter.) I will vse a two-folde manner of confirmation, and will shew that either the Lawe hath those thinges which they denie vnto it, or if it doe want them, it needeth them not. The writings of wise and graue common weale men learned in the Lawe are not to be censured by Grammarians, and Rhetoricians, who make a gallant glosse of *Clytemnestraes mules*, Alexanders horse, and such friuilous vanities. For their studie was farre different being for the generall good and commodious gouernement of the common weale. And if any man reproue them for want of sharpenesse of inuention, and fineneſſe of witt, let him bee wel aduised, and consider the substance of their workes, and he shall find, that they carried *Mercurie* in their brain, and not on their tongue, and that they wanted not wisedome, though they were defective in Rhetoricke, which not to haue ioyned with wisedome, is so far from fault, that if they had conioined it they had cõmitted a fault, for who wil not dispraise & detest curled haire, & paynting

of the face in an aged Matron. And in their writings wherein their cheife purpose and ayme was, to search out the truth of doubtfull matters, and to deliver it to posteritie, there could be nothing worse, then a curious kind of stile, which is vsed commonly of them that seeke to flatter, to dissemble, and to bewitch with a familiar kind of perswasion the common people, with whom such flowers are of more accompt, then substanciall fruit. All kind of things is not convenient for all sorts of men, Rethoricke I graunt is a pleasant thing, and full of delight. But in professors of grauitie, neither comely nor commendable. Who would not allowe a tripping gate, nimble handes, glauncing eyes in a Stage-player or dauncer. But in an auncient Citizen, or graue Phylosopher, who would not dislike them, blame them, abhorre them. If we see a young Damesell pleasant and talkative, we doe not reproue it in her, but if we finde that in a Matron, we loath and condemne it. And truely from the purpose and practise of graue men, there should be nothing more different, then that which sauoreth of too much daintinesse or curiosity. *Alcibiades* his shoe is not fit for *Socrates* his foote, and it is not convenient for graue men to celebrate the feast of *Bacchus* in the Temple of *Vesta*: there is great distance betwixt the

the ſtile of the Courtier, and the profeſſor of the Law: For if the Courtier ſhould neglect delicate ſpeech, he ſhould be no good Courtier: ſo if the profeſſor of the Law ſhould affect it, he ſhould not ſpeake like a Lawier. If *Pythagoras* could haue liued without meate, he would not haue eaten ſo much as hearbes, and if he could haue expreſſed his meaning by ſignes or geſture, or by any other meane then ſpeech, he would neuer haue ſpoken, ſo loath was he to offend in ſuperfluity: Therefore the writers of the Lawe are not to bee reprooued for doing that, which if they had done they might iuſtly haue beene reproued. *Cicero* when he treateth of matters of Law, ſpeaketh like a Lawyer, and a Lawyer muſt ſpeake as the Law doth ſpeake: Therefore *Baro* [q] ſaith well, the writers of the Law would not haue left to poſteritie, ſo many Law-bookes, if they had affected a choice phraſe of ſpeech. And ſurely if when the Latine tongue did moſt flouriſh, the *Ceſars* and *Cicero* himſelfe, did not vſe any gorgeous and fled kinde of ſpeech in matters of Law, ſhall we deſire it of *Bartolus*, *Bracton*, *Britton*, and *Glanuill*, when eloquence was in the Eclipſe or wayne, exceedingly decayed. *Varro* ſaith, that by the diuerſe mixtures of people & nations, old words grow out of vſe, and are changed, and new do take place: [r] How can it then bee, but that the Common Law ſhould haue

[q] In Epiſt. ad Com. Iuſt.

[r] Varro lib. 4. de lingua latin.

haue harsh, obscure, difficult, & strange termes by the commixtion of the seuerall languages of the *Saxons*, *Danes*, and *Normans*, the authors of the same. *Polybius* reporteth, that there was such alteration of the *Romane* language some after the expulsion of their king, vntil his time, that they which were most skilfull of antiquitie could hardly vnderstand a great part of the words [f] which doubtles was a great impeachment to learning and knowledge. If the receiued words of the Lawe should be altered, it may well be presumed that many auncient bookes of the Ciuil law, & the old yeare bookes would in short time be hardly vnderstood. And I am surely perswaded, that if the auncient Termes of the Law should be chaunged for more polite and familiar nouelties, the new termes would be nothing so emphatical and significant as the olde. The words of the Law may be compared to certaine Images called *Silemi Alcibiadis*, whose outward feature was deformed & ougly, but within they were full of iewels & precious stones: so the wordes of the Law, though they be rude in sound, yet are they preignant in sence. But some perhaps will say myne eares cannot tollerate such an vnpleasant sound and so confused a style, O delicate fellow, when you go to the Theater or dauncing Schoole repose your selfe wholly in your eares, but when you come to heare matters

[f] Polybius lib. 3. histor.

ters of weight handled & discussed, rest not vp-
on your sences, but vpon your mind and vnder
standing. *Alcibiades* was more mooued by the
naked speech of *Socrates*, then by the laboured
eloquence of *Pericles*: But this *Rhetorician* will
replie: I confesse the Law to be of it selfe a re-
uerend & excellent thing: but it would bee no
whit worse, if it were more finely and politely
deliuered. Who will deny that which is comely
of it selfe to bee made more comely, if other
thinges be added to adorne it? To answere
this briefly and plainly, many things there bee
to which if you should adde any other thing,
you should take away their place and beawty.
They be of their owne nature in so good estate,
that you cannot change them, but you must
needs make them worse: A Tombe or pillar of
marble, if it should be painted with any colour,
should lose the former grace, & be a great deale
worse: & a beawtifull face is often disgraced,
by a needles ointment, & so it is of other things
which of themselues are faire and comely: the
thing which is added hideth that which it fin-
deth, & sheweth that which it bringeth: & these
things which are handled in the law are not a-
dorned by the varnishing of art, but are obscu-
red by it. And it is not conuenient in such a seri-
ous matter to dally with tropes & figures, nor
to riot with superabūdāce of words, nor to flo-
rish w eloquēce & diapered phrases: But yet he

will

will further obiect, Though it doe not belong to the professors of the Lawe to speake and write figuratiuely; yet surely it behoueth them to speake and write in good congruitie, which notwithstanding they doe not. I would gladly know what congruity it is which Curiositie hath required: The fine *Rhetorician* will say, *absurda consuetudo disrumpenda est*: The Lawyer, he will say, *usus contra rationem amandus est*, hee will say that it is not Romaine latine, it is most true: therefore (will he conclude) it is not well spoken, nor *congrue*, the argument halteth. The *Moscouite* will speake of a thing after one sort: the *Fleming* after an other sort will vtter the same thing: neither of them speake in Latine, but in their owne language: do they not therefore speake right? yes, they speake right and *congrue* in their owne language, and so do the Lawyers in their owne dialect and language proper to their Art. Doth any man thinke that these words, *Bellum, Exul, Sylua, Proscriptio, manus iniectio*, were vnknowne to the auncient writers of the Law? Yet sometime they doe not vse these, but in stead of them they say *Guerra, Bannitus, Boscus, Attinctura, Arrestum*. But it is conuenient that they should vse these latter words, being proper to their Art or sciences. Neither is it meete that they should change them for the wordes of a strange language,

guage. Wherefore *Scaliger* doth vpon good cause dispraise the *Gretians*, because they doe expresse things merely forreigne and externall by wordes of their owne Idioms: and commendeth the *Romanes*, because they did apply forraigne words to forragne matters. And the common law being derived from the *Normans*, and other nations, doth conueniently retaine the words of the first Inuentors. And because amongst Lawyers Latine words bee vsed many times in an other sence then they are vulgarly and commonly taken, it is not good to haue the interpretation of such words from any other then the Lawyers themselues. And though the *Grammarians* and *Antiquaries* doe in the Etymologicall interpretation of words excell: yet the writers of the Law in the Analogicall interpretation of such Latine words as do belong to their Art do farre surpasse them. I do not thinke any exquisite skill of the Latine tongue to bee necessary in a Lawyer: but hold it sufficient if he know so much thereof, and in such manner, as the common sort of men, which are conuersant in the reading of Latine bookes. And *Plato* hath a good saying to this purpose, that these things ought of necessity to be knowne, wherof if a man should be ignorant, he should be said to be shallow [u] and superficiall. So much therefore of the Latins tongue ought to be knowne, as will

[t] Iul. Scaliger in exercitat. 101.

[u] Plato li. 7. de Legi.

will keepe a man free from such reprochfull tearmes. The auncient Reporters and handlers of the Law whilest they writ of Fines, Vouchers, Remitter, Restitution, Releases, and such intricate matters, had no leasure to note the properties and rules of the Latine tongue in *Cicero*, *Plinie*, *Plautus*, and *Varro*: they inquired not which was good Latine, but what was good Law: But they were wise in their Judgements, circumspect in their advice, sharpe witted in their arguments, graue in their speech, subtill in their questions, cunning in their resolutions: they were excellently instructed to distinguish of ambiguous things by most witty diuersities, to open and to argue hard and enigmaticall cases by sound and inuincible reasons, to confute that which was false, and confirme that which was true. And whereas they are impeached for the want of good and proper definitions, let me aske of these strict *Logicians*, what a definition is? I thinke they will say that it is a briefe and plaine declaration of the substance of a thing: and be there none such in the Law? surely many: but they will haue it to consist of the proper *genus* and the proper difference, as they tearme it, without adding any thing else: But it is sufficient if it expresse the nature

of

of the thing, whereunto it is applyed. May not these bee admitted for good definitions, A Fayre is a great Market: a Market is a little Fayre: a Village is a multitude of houses: a Countie is a multitude of villages. Do not these sufficiently expresse the nature of a Fayre, Market, Village, and Countie: yet if they should be tryed by the touchstone of the *Logicians*, they would bee vtterly reiected as not currant. Some do spend a whole decade of howers in doing nothing els, then seeking out the proper *genus* and difference of one onely thing, and when they have done, they are scarcely so wise as they were before, they may say of themselues as *Gentilis* speaketh of them very fitly: *Confidentia afra petimus, ruimus in præcipitia.* [x] Their diuisions likewise are reproued, because they do not flow from the essence of the thing diuided: yet it is sufficient if they do briefly diuyde a thing into his particulars. Who can disallow of this diuision vsed in the Law, whereby all causes are sayd to bee either criminall, or pecuniary: none but such as will find a knot in a Bulrushe. Again, they say their reasons are not artificially concluded: Surely, it is not for any man, vnles hee bee in the Schooles to tye himselfe to a precise kinde of syllogysmall logike: But if it goe to the end of the controuersie, it is sufficient, and that is the opinion

[x] Alberic. Gentilis li 4. de iur. interp.

of

of *Alciat*. [a] Their Methode is amongst other things reprooued, or rather their want of Methode, which exception wanteth trueth. All bookes written of the Law may be reduced to these foure heads: either they are Hystorical, as the yeare Bookes of the Common Law: and *Zasius* his counsailes in the Ciuill law, in which no Methode is requisite, but it is sufficient to report the things done, and how they were done: or explanatorie, as *Master Stamford* his Treatise of the Prerogatiue, and the discourses of diuers Glossographers, and Commentors in the Ciuill Law, wherein no strict Methode can be obserued: For the Commentor must alwaies follow his authour euery way that he goeth: And if there be no Methode in the one, there cannot iustly be any demaunde of the other. For he that vndertaketh to comment, or to confute, must apply himselfe wholy to the course of his Authour, or the aduerse party: And therefore *Scaliger* said very aptly to *Cardanus*, *Sequor te non quo ducis, sed quo trahis*: [b] Or else they be Miscellaneall, and in such there nedeth no Methode, because things of diuerse sorts, and not depending the one vpon the other are laide together: And such are the Abridgements of the Common Law, and the *Pandectes* of the Ciuill Lawe: Or else they be Monological, being of one certain subiect, as *Ma. Stamford* his booke intituled the

[a] Alciat. lib. vii. parer. c. vii.

[b] Iul. Scalig. in exercitat.

Pleas

Pleas of the Crowne, Mr. Lambards Iustice of peace, whom if any reprooue for lacke of methode, surely his iudgement is out of order, and that excellent Booke of *Albericus Gentilis*, a Ciuilian *De legationibus*, then which I haue not seene any thing done with more plausible, artificiall, and exact methode which as it is very hard for any to imitate, so it were to bee wished, that he would in some other like treatise equall himselfe.

But yet another obiection hauing more fauorers then the former must bee answered, which is that the Law is vncertaine, and that Lawyers in their opinions and arguments doe greatly differ, and dissent. But here the matter is greatly mistaken. For the Law it selfe, which doth consist of agreable conclusiõs, and of the iudgements, awards and opinions, to which reason and truth haue subscribed, is not vncertaine, how-bee-it they which doe argue of new questions, and causes neuer heard off before, or such as for their great difficulty haue not yet bin decided, doo in argument contend amongst themselues: but that which moueth disputation is not the obscurity or doubtfull vnderstanding of the Law, but the qualities and circumstances of the persons, of the actions, and accidents, of the time, the place, the antecedents, and consequents. And though reason bee opposed to reason, and circumstance

to circumſtance, yet the Law is neuer oppoſed to it ſelfe. And if a man will condemne an Art, becauſe the profeſſors and practiſers are diuers in opinion, ſurely there is no art, nor ſcience, which will be free from condempnation. Goe to the Hiſtoriographers, who ſhould report the truth of euery thing, you ſhall finde them at great odds: *Lyuie* againſt *Polybius*, *Plutarche* againſt *Lyuie*, *Sigonius* againſt *Plutarche*, and *Xiphilinus* the interpreter and abridger of *Dio* againſt his authour. *Dio* reputeth a prodigious miracle, which *Xiphilinus* altereth, ſetting a new face vpon it, and diſcrediting his author. [c] Goe to the Grammarians, you ſhall find ſeuen great Maſters at variance about this one word *Anticomarita*. [d] Goe to the Philoſophers, there is great diſſention and a diametricall repugnance of opinions amongſt them: there you ſhall ſee the Parepatetikes againſt the Academikes, the Epicures againſt the Stoikes, the Cyrenaikes againſt the Cynikes, the Nominalles againſt the Reals, the Carpentarians againſt the Ramiſtes. Goe to the Schoole of the Phiſitions: you ſhall haue the like diſagreement: Galen againſt Hipocrates, Auenroes againſt Galen, Auicenna againſt Auenroes, Paraſelſus againſt them all, and Eraſtus againſt him. Will any man nowe condemne Hyſtorie, Grammer, Philoſophie, and Phyſicke:

c Xiphili. in vita M. Anto. Philoſo.

d Eraſti. Collegiator. in Synod. Gramma.

If not, then it is euident, that an Art or Science is not to bee reprooued, because the writers thereof doe in opinion or argument disagree. No more is the Law to bee disprai-sed, but rather to bee liked for the varietie of opinions in it. For as by the collision or beating together of Flint and Iron fire doth appeare, So the trueth is disclosed and made manifest by the conflict of reasons. A man shall more easily and discreetely iudge of thinges (saith *Aristotle*) If hee haue heard the reasons on both sides contending like aduersaries.[e] But if some men be more contentious in points of Law, then others, that is the fault of the men, but not of the art. The knowledge of the Law (saith *Cicero*) is not Litigious, but the ignorance thereof.[f] And if a man should deferre his studie of any Art, or Science, vntill the writers thereof did fully, and vnitedly consent, It would bee as vaine a thing, as if a man should purpose his iourney from London to Yorke, but should make a vow not to beginne his iourney, vntill all the clockes in London should strike together.

[e] Aristot. metaphy Sicut. 3. c. 1.

[f] Cicer. lib. 4. de Finib.

Now that I haue removed out of the way all such obiections, as might be occasion of impediment, and interruption of the student, I thinke it not beside the purpose, to prescribe and commend vnto him some speciall writers

of the Law, in the reading of which, he may with aduantage and ouerplus bestowe his paines.

He that frameth himselfe to the studie of the Ciuil law, may very profitably imploy his paines in reading of the *Code*, *Nouellaes*, and *Pandectes*, which are necessary for the profession. Of the auncient writers I thinke these are most conuenient to be read, *Bartolus*, *Baldus*, *Paulus de castro*, *Philippus Decius*, *Alciatus*, *Zasius*. Of the latter writers, *Budæus*, *Duarenus*, *Cuiacius*, *Hotomannus*, *Donellus*, and amongst these, yea aboue these, him whom I lately named *Albericus Gentilis*, who by his great industrie hath quickned the dead bodie the Ciuill Law written by the auncient *Ciuilians*, and hath in his learned labours expressed the iudgement of a great state-man: the soundnesse of a deepe Philosopher, and the skil of a cunning Ciuilian: Learning in him hath shewed all her force, and he is therefore admirable, because he is absolute.

The Common Law is for the most part contained in all the bookes called the *Annals* of the Law, or yere Bookes, all which are to be read, if the student will attaine to any depthe in the Law. In them he shall see notable arguments well worthie of paines and consideration. The two late reporters are *Mr. Plowden*, and *Sir Iames Dyer*, who by a seuerall and distinct

diſtinct kind of diſcourſe, haue both laboured to profit poſterity. Some humors doe more fancy *Plowden* for his fulneſſe of argument, and plaine kinde of proſe: others doe more like *Dyer*, for his ſtrictnes and brevity. *Plowden* may be compared to *Demoſthenes*, and *Dyer* to *Phocion*, both excellent men, of whom *Plutarche* reporteth, that ſuch things as were learnedly, wittily, copiouſly, and with admiration dilated, and deliuered at large by *Demoſthenes*, were ſhut vp in few words, compendiouſly recited, and with admiration handled of *Phocion*.

There bee certaine auncient writers of the Law, namely *Bracton*, *Britton*, and *Glanuille*, whom as it is not vnprofitable to reade, ſo to rely vpon them is dangerous: for moſt of that which they do giue forth for Law, is now antiquated, and aboliſhed: their booke are *monumenta aderanda rubiginis*, which be of more reuerence then authority.

Maſt. Forteſcue in his writing ſheweth a ſharge iudgement, and in this is exquiſite, and artificiall, that wher he indeuoreth to be plain, he ſpareth not to be profound. For he writ to a King, who deſired to haue intricate thinges plainly opened.

Ma. Littleton layd a ſure foundation of the Law, and by his owne booke hath deſerued more praiſe then many writers of note and

name by their ample volumes: out of the great Bookes of the Lawe hee gathered the most speciall cases, which were either generally agreed vpon, or by the Court awarded to be Law, or else in all ages received for positiue rules. For very fewe there bee throughout his whole treatise, which may not bee signed with one of these three markes: his booke doubtlesse is of such singularity, that *Littleton* is not now the name of a Lawyer, but of the Law it selfe.

Ma. Fitzherbert must needs bee commended for great paines, and for well contriuing that which was confusedly mingled together in many yeere Bookes: but he was more beholden to nature, then to art, and whilest he laboured to be iudiciall, he had no precise care of methodicall points: but as hee was in conceit slowe, so hee was in conclusion sure: and in the treatises which bee of his owne penning, hee sheweth great iudgement, sound reason, much reading, perfect experience, and in the whole conueyance of his discourses giueth sufficient proofe, that hee sought rather to decide then to deuise doubtfull questions.

Mast. Brooke is more polite, and by popular and familiar reasons hath gayned singular credite, and in the facilitie and compendious forme of abridging Cases hee carryeth away

away the garland. But where *M. Fitzherbert* is better vnderstood, he profiteth more, and his Abridgement hath more sinewes, though the other hath more vaines, but I am loath to make them countermates, and therefore leaue the iudgement therof to others.

In *Mast. Parkins* his booke bee many commendable thinges, deliuered by a readie conceit, and pleasant methode: many excellent cases which sauour of great reading, and good experience, his Treatise is to young Students, acceptable and precious, to whom his very faults and errours bee delightfull, but it might bee wished, that hee had written with lesse sharpenesse of witte, so hee had discoursed with more depth of Iudgement. For hee breaketh the force of weighty pointes with the shiners of nice diuersities, yet many thinges are to bee allowed in him, many to bee praised, so that the reader bee carefull in his choice, wherein he was too carelesse.

In *Master Stamforde* there is force and weight, and no common kinde of stile: in matter none hath gone beyonde him, in methode, none hath ouertaken him: in the order of his writing hee is smoothe, but yet sharpe, pleasant, but yet graue: famous both for Iudgement in matters of his profession, and for his great skill in forraigne

learned. And surely his methode may be a law to the writers of the law which shall succeede him.

Mast. Rastall for his long and laborious trauaile in collecting matters of weight, and moment, which lay dispersed, and reducing them to a conuenient forme hath deserued neuer to be forgotten. And I know not whether I may more iustly commende him for his greatnesse of knowledge, or for the largenes of his bookes and labours, or for his speciall care of doing things exactly.

In *Mast. Theloall* his Digest of writs, diligence and desire to profit is eminent. He indeuored to bee like *Ma. Stamford*: but hee is so far distant from the delightfull progresse of his stile, and methode, that hee may seeme to haue liued in some other age a long time before *Ma. Stamford*. But as his strength was lesse, so his labour was equal. For in handling one title of the Law, he hath dealt so painefully, that no point can bee named concerning that Title, which hee hath not discussed, nay to giue him right, hath not fully discussed.

Ma. Lambards paines, learning, and Law, appeare by his bookes, which are contained by so curious methode, and beautified by such flowers of learning, that he may wel be reputed amongst thē to whom the Law is most beholden. His stile runneth like a temperat stream,

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his excellent knowledge and vse of antiquities argueth no small reading, & a singular conceit: he hath bin so vniuersally beneficial to ỹ whole realm, that whosoeuer despiseth his workes, bewraieth himselfe.

Mr. Crompton hath taken great paynes in this study, and his bookes are in euery mans hands, which prooueth their generall allowance, his cases are very profitable, and apt for the title to which they are applyed, and so compendiously collected, that a man may by them in a few howers gaine great knowledge.

Certaine Rules to bee obserued of the Student in the *reading of his bookes.*

The fourth Chapter.

NO actions haue good successe, which be rashly & *ex abrupto* vndertaken without direction: for where aduice faileth, there fortune is blind, and not in other cases, and it is far greater trauel to atchiue any matter of difficulty by selfe labour, then by the prescription and instruction of others: Wherefore it shall not bee inconuenient to propose cer-

certaine rules, by which the student may hold an euen course in the study of the Law.

In the vnderstanding of the Law the Student must not vary or depart from the proper sense & signification of ẏ words, vnles thereby some absurdity, inconueniẽce, or vniustice may appeare: for otherwise the property of wordes is strictly to be maintained, & retained. Therefore let him be diligent to search out the proper sense of words: for as *Celsus* saith, *Scire leges non est verba earum tenere, sed vim & proprietatem,* [a] To know the Law is not to knowe the words of the law, but the force and propertie of the wordes: for wordes are as it were seruants to things, because they were first inuented for the plain & perfect discription of things: for though nature do make soundes, yet industry doth coyne words, without which our vnderstanding might be contemplatiue, but not practical: for without them the vnderstanding is in maner bound, or maimed, because without freenes of speech, and plenty of words it can not display it selfe, nor extend his force to the opening & discouery of any mean matter. And as art maketh the mind to speake, so ẏ mind or vnderstanding maketh art to write. Certaine it is, that without words a mãs meaning may not be certainely knowne: Of words some be artificiall, & some inartificiall: Inartificial are those which the common or vulgar sort of men

a Celsus lib. 9. digestor. Plo. Com. 28. p Saunders.

do

do vse for the deliuery and declaration of their intentions and meanings, seruing not for the illustrating of arts and sciences, but only for mutuall conference betwixt man & man. Artificiall, are these which the inuentors of artes haue deuised for acquainting the mind with ỹ rules & misteries of their arts, because words fitly & accommodatly vsed are the very images and representations of things, which do leade the vnderstanding as it were by the hand, to the apprehension and perfect knowledge of the things them selues: wherefore in this respect diligence must be vsed of the student.

2 Where the Law is obscure, that sence must be taken which is least preiudiciall: for euery perfect speeche of man consisteth of two thinges, of words, and of meaning, and when both the words and meaning are plaine & manifest, he that doubteth of any thing is rather foolish, then curious: But when the wordes be directly repugnant to the meaning, the whole proposition or assertion is meerely voyde. Obscurity in writing or speaking, is when the sence cannot be gathered, 1. by that which of the most part of men is vsually done, 2. nor by that which was vsually done by him that vttered the words, 3. nor by the customs of the countrie, 4. nor by the common vse of speech, 5. nor by the premisses, nor by the sequell; And therefore if a man

will

will hire workmen, and will covenant with them that he will giue them as much as other men of the same village or parish, if some giue by day 3. pence, some 6. pence, some 12. pence, the covenantor in this case shall giue but two pence: [a] because *in obscuris quod minimum est sequimur*: Otherwise it had bin if it had bin plainly & expressely said (as much as any other man of the said village or parish.) So if a man premise upon good consideration to giue to every of the Canons of a Cathedral Church a quarter of What every yeare, and the number of the Canons bee augmented: yet the graunt is restrained to that number, which was at the time of the grant. [aa] Yet the Law doth sometime construe deuises by mediocrity: [b] As if a man deuise to one two cuppes for his table, without expressing the mettall whereof they shall bee made, they shall neither be of gold as the best mettall, nor pewter as the baser mettall, but of Syluer as a mettall betwixt both: But that is, because euery deuise ought to bee interpreted for the benifit of the deuisee, & yet as neere to the meaning, and as far from the prejudice of the deuisor as may bee: Therefore in deuises not words but meaning is followed, & a transposing of the words may bee vsed if the meaning require: confused things must bee distinguished, generality restrained, seuered things must be conioined, implied things must bee

[a] Guido question. 252.

[aa] Imo c. literas de restript. 38. H. 6. 10. 39. H. 6. 6. Temp. E. 1. Common 38. & 21. E. 3. 2. per Wilby.

[b] Philip. Dec. Comment. ad regul. iur.

bee explicated. But in bargains and contracts wee must not respect so much that which was meant, as that which is spoken, because bargaines do properly consist in *facto*, and therefore in matters of contract a mans will is rather gathered by his words, then by his meaning: for, *propositum in mente retentum nihil operatur*, and as the words do sound, so his will is to be construed: and the words of the contract be the substance of the contract.

3 When the opinions of the learned in the Law are repugnant the one to the other, it is the safest and best way to follow that opinion which is most agreeable to reason: for if contrary reasons bee probable, the better of them is to bee chosen, and that which is more consonant to Equity: and where the reason of the Law doth faile, there the disposall of the Law doth faile: [bb] As of the contrary part where, the reason of the law taketh place, there ỹ law taketh effect. [c] But if contrary reasons doe seeme to bee of great force, wherof the one tendeth to a publique good, the other aymeth at a priuate aduantage, that which is for the common good is more to be imbraced, fauored, and followed: for that which is good to many must needs bee good to euery particular person: and these things which are generally expedient, are with good reason preferred before such things as do peculiarly profit. [d] But that reason which is

bb li. adiger. § quamuis de iur. patron li. 7. P. tit. 14. c. cum ceſſante de appell.

c l. non poſſit & li. nam & ait Pedius de ll. in p.

d Iulian in l. ita vulnerat. § quod ſi quis abſurde ad leg. Aquilei.

is for the profit of a priuat man, and doth not preiudice cõmon right, may well be admitted. Publike profit may be considered after foure maners, 1. when profit doth accrue both generally & particularly, as by the gouernment of Magistrates, 2. when the profit is generall, but not particular: as *Iecuplatatio erarij*, the enriching of the Treasury in Cities & Townes corporate, 3. when the profit is priuate, but yet a publike good commeth of it: as the dowry of women, and the infranchising of Citizens, 4. when it doth so profit particularly, as that it doth not disprofit generally: as when we say that it is not expedient, that men should mispend their goods, or throw them into the Sea: That reason therefore is of more force in law, which is more generally commodious.

c L. 1. §. huius. ff. de insti. & iur.

f Lpen. c de princip. li. 12.

Atque ipsa utilitas iusti prope mater et aequi.

g Horat.

It is good therefore for the Student to sift out the reason of the Law, & that by very diligent & earnest search: for the reason of the law is the life & soule of the Law: Wherefore not without good cause is *Bartolus* reproued of the Ciuilians, for that hee denied reason to be of the essence of the Lawe: And surely I thinke there is no Law wholly without reason, I mean which was not grounded vpon reason at the first making of it. Yet I will confesse that the reason of many Lawes is so obscure, and vncer-

h Alciat. lib. 3. de verb. sign.

uncertain, ỹ it can hardly be found out, conceyued, or delinered. The law is ỹ inuẽtion of wise men, who would not make any thing publike without reason, though ỹ reason of ỹ law may be hid frõ him, frõ me, & from a nũber of men: neither are we to think ỹ any law is therefore without reason, because a reason therof cannot be rendred: for as *Cicero* said wel, *Iniquũ est quod accidit non agnoscere, si cur id accidat, reperire nequeamus,*[l] It is an vniust thing no to acknowledg the thing which hath happened, because wee cannot finde out the reason, wherefore it happened. It is not good to affirme that the Lawes made by wise men do want reason, because we cannot discouer the reasõ. But as I do not like *Plato* his conceit, whẽ he forbiddeth yong men not to inquire of the reason of the laws: [m] so to be too curious in the inquisition of it, wil be rather matter of trouble then of praise to the Students: therefore it is a point of humility & modesty to think those things, which by graue & sage men haue bin established for law, not to be without reason, though ỹ reason therof can not be discerned. And that which *Gentilis* wittily speaketh of the Ciuil law, may be affirmed of the cõmon law of this realm, *Rationẽ vbique habet sed non vbique conspicuam.*[n] *Castrensis* is so peremptory for ỹ reason of the law ỹ he boldly auoucheth, ỹ he neuer saw any law, wherof he did not see the reason. [o] *Theodosius* did ascribe such

l Cicer. in ora. ad Brut.

m Plat. lib. 1. de leg.

n Alber. Gentilis li. 2. Epistol. c. 2.

o Castr. in eo §. item si recip.

such authority to the deceassed professors of the law, that he would haue their answers in doubtful matters to haue the force and strēgth of a Law. And the same thing was done by *Augustus*, as *Pomponius* reporteth. [p] But yet I could wish, as *Gentilis* [q] & *Alciat* [r] doe require, that the authorities and cases of the learned writers of the Law should rather be weighed then numbred: that is, should rather be examined how they accord with reason, then how many they be in number: but if it so fall out, that two men of great iudgment do dissent, his argument is to be held for Law, which reason doth informe and inforce to be agreeable to the truth: For no man will intend the meaning of the Law to be, that the opinion of any man, though singular in knowledge, should be preferred before the truth: For both the Lawyer and Iudge are ỳ ministers & dispensers of Iustice, and of the gifts of God, & are seruants to God himselfe: but the seruant must not do that which the Master will not permit: but neither Iustice nor God will doe any thing against the truth: Therefore, neither the Lawyer nor Iudge ought to do any thing against ỳ truth. If Iustice should iudge according to opinion, & not according to verity, it should dō iniury, which thing is against her nature. And though many arguments be made for the preseruing and maintaining of the rigor of law, yet none of

p l.2. de orig. iur.

q Abberic. Gentilis l. 3. Epistol. c. 17.

r Alciat. lib. 4. parerg. c. 17.

of them ought so to be admitted against iustice and trueth, as that occasion of iniurie may seeme thence to arise, whence right and equitie should proceed: [f] because no reason of the Law, no course of equity will tollerate, that those thinges which haue been conueniently introduced for the profit of men, should bee against their profit with a more hard and rigerous interpretation restrained. For these things which bee established for a certain end, ought not to worke the contrary. [t] But some perhaps will obiect, that a Iudge ought to determine and a Lawyer ought to argue, according to the knowledge which hee hath by the written Law, and that is the reason and conscience of a Lawyer, as hee is a Lawyer. But surely such argumen's are not proofes, and such iudgements if they bee not according to the truth of the thing it selfe, in reason are not sound nor maintainable. For euery proofe should bee a true assertion, and euery iudgement the rule of trueth. And how can that seeme iust according to the Law, which appeareth to a mans conscience to bee vniust. Surely the light of the trueth in an honest minde dymmeth and obscureth all cauils and quillets: And it is a friuolous dreame to thinke, that a Lawyer hath one conscience as a Lawyer, and another conscience as a Christian. For hee hath but one soule, and know-

f l. meminerint. c. vn. vi. lit. 42. coll. 9.

t l. quod fauor c. de legi.

ledge of the trueth, and therefore but one conſcience: for *conſcientia* is *cordis ſcientia*, and no reaſon will require that a lye, by any diſtinction ſhould be preferred before the truth. The principall meane to inquire after the truth of every thing, is to examine of two or more contrary reaſons whether is more probable. That which is plauſible to common vnderſtanding is tearmed probable, and when the wordes of a couenant or deuiſe bee cleere and manifeſt, wee follow the litterall ſence of them without farther inueſtigation, becauſe in things that be certaine, and apparant, there is no place for coniecture: but when the wordes be obſcure, or when ſome thing is omitted, leaſt the grant, couenaunt, or deuiſe do faile, wee haue alwaies recourſe to that which is more probable, and wee imagine that more was ſpoken then written, and more intended, than vttered. And it is not conuenient, that in the affayres of men, the interpretation which dependeth vpon probable coniecture ſhould bee excluded. A thing may be probable many waies, firſt, by the common vſe of ſpeech, [c] ſecondly, by comparing the conſequent with the antecedent, thirdly, by the circumſtances of a mans actions, fourthly, by the concordance or agreement with the Law, becauſe euery one is intended to conforme his will according to Law, vnleſſe the contrary be proued:

a l. non aliter ff. de legat. 3.
b decil. Neapol. 44. Numb. 26.
c Marius Salmonius ad l. omnes populi ff. de iuſtitia. & iure.

ned: [d] but it may bée sayde, that where the words of the law do faile, the law it selfe doth faile. [e] And words were inuented, that they might shew the meaning of the parties, therefore wée must not regard that which is probable, but that which the words doe sound. [f] To this I aunswere, that there ought to bée no departing from the wordes, and from the true property, vnlesse there bee apparant proofe of an other meaning: [g] but where an other meaning doth appeare, there the tongue yeeldeth to the heart, and the words do giue place to the meaning. [h] The words onely in such case are not to bée regarded, but wee must consider what was meant by the person, quantitie, qualitie, place, time, precedents, consequents, and other circumstances. [i] And where it is sayd that if the wordes fayle the Law doth faile, it is true, vnlesse there bee some secret intent of the Law to the contraie, [k] the ground whereof is probabilitie. And though a mans sense and meaning be declared by his words, [l] yet because there bee more thinges which wee thinke, than which we speake or write, the speech of a man is not alwayes the touchstone of the minde, but the concurrence of circumstances: and though a mans words ought to be taken most strongly against him, [m] yet they are well to be sifted & examined, [n] least the

d quæro. § inter locatorē. ff. locat.
e L. 4. § toties ff. de damn. infer.
f li. si repetendi c. de condic. ob causam.
g l. non aliter. ff. de leg. 3.
h Bal. in c. mandat de rescript.
i l. penult. ff. ad exhib. Alciat in l. 1. ff. de verb. sign.
k Tiraquell. in l. si vnquam ad verb. lib. Num. 35. C. de reuoc. donat.
l Quintilian. li. 7. c. 7.
m ad. d. l. si inquam in princi. num. 54
n l. semper in stipulationib⁹ ff. eod.

interpretation bee too burdenous in some case, [o] and so vniust against the party. A mans speech doth consist of words and meaning, euen as a man himselfe doth consist of bodie and soule, or to make the matter more plaine, the words are but the superficies, and the intent or meaning is the substance. [p] And the Law traceth the meaning of a man by the circumstances, euen as the hunter traceth the hare by the print of his foote. [q] Yet I would not that a mans deede or act in the countrie should bee made frustrate by some Iewish or misticall interpretation: but such an intendment must be taken, as the words being compared with circumstances will yeelde. For words are not by violence to bee racked, but by circumstance to bee ruled. And wee must alwayes so interpret, that a mans right may bee vpholden. But it may bee further obiected, that in graunts and contracts, and in other priuate affaires *Casus omissus habetur pro omisso*, [r] and the intention or meaning of a man, which is not apparant and manifest, is as a child vnborne, which is of no account till hee bee brought to light. [s] For a mans speech is an externall act, which is ordained for the declaration of his inwarde meaning, [t] and therefore wordes are said to bee the limits of our meaning. [u] To aunswere directly, these words (*Casus omissus &c.*) are to be vnderstood only

o Lorlotus de reg. axiom. 105.

p l. tutor petitus §. 1. ff de excus. tut.

q Bartol. in l. si quis serio coll. vlt. c de fur. & Cons. 275. li. 2. num. 2.

r l. si commodissim. ff. de liber. & posthu. l. post dotē ff. solut. matrim.

s l. Vlt. c de posth. hæred. instit. Baid. ad l. 1. C. qui admit. ad bonor. post & col. 9.

t l. Labeo ff. de supell. legat.

u Socyn. consi. 4. l. 41. Lison. Cons. 240. li. 2.

only in such cases where a thing is omitted, both in respect of the not expressing of it, and in respect of the not implying it. But where the Law will vphold the meaning of the partie, there is no neede of woords: and though woordes were inuented, that they might expresse our thoughts, yet by them only our meaning is not signified. But there be other signes [x] namely, the circumstances before the act, in the act, and after the act. Thus it is euident, that the best and most probable reason in the conflict of opposite arguments, is to be sought for by the Student, and how it may be found.

x l 3. ff. de testi l. de minore ff. de quæst.

4 The best interpreter of the Law is common reason and intendment. [a] Wherefore if any one mans opinion do differ from common reason, let the Student auoid it. Neither are such things without cause to be altered, which haue allwayes heretofore receiued a certaine interpretation. [b] Neither is the common Law any other thing, then a determinate order established and ratified by common consent. Wherefore *Bodinus* saith not well, who putteth this difference betwixt a Law and a Custome, in that a custome is accepted by the plausible agreement of the multitude, but a Law springeth vp in a moment, [c] and is commanded by the authority of the Rular, many times against the liking of them that are

a l. si de interpret. ff. de ll.

b l. minime ff. de legi.

c Bodin. li. 1. de repub. c. 10.

bound by it, For common Law is that which is made and approued by common allowance, and therefore it is Law, because it is commonly vsed for Law. Wherfore *Athenaeus* [d] and [e] *Polibius* doe vpon good ground and reason reproue the lawes of *Plato*, because no nation of Greece could bee perswaded to vse them: but as *Plato* faigned lawes, so he might likewise faigne men to vse them: therefore *Horace* sayd rightly, *Quid leges sine moribus vanae proficiunt?* Lawes without vse are vaine and profit not. [f] But here it is good for the Student to be assured of what nature & qualitie the thing is which I call common reason or intendement, for what may seeme to offer doubt, whether we ought to ascribe common reason and opinion to the number of authors, or to the worthinesse of them, or to the perswasion of reason which doth *concludentur demonstrare* to ẏ sense & vnderstanding of ẏ most part of men of indifferent capacity. I would haue cōmon opiniō takē according to this last brāch

5 The things which be odious in law must be restrained, & the things which be fauorable must be inlarged. Priuat customes are odious in the eye of law, & whatsoeuer swarueth from common right: [g] for ẏ common law was framed in fauour of publike tranquility, & therefore ẏ departure from it must needs be accounted odious. [h] The Law is more proane to acquite,

d Athenaeus li.12.c.22.
e Polibyus histor.li.6.
f Horat.li.4. carm.ode.c4.
g c.cum delect de consuetud. l cū quidam ff. de li.& posth.
h Aymo consil 170.nu.3. Baldus in l. non possunt ff.de legib.

quite, then to condemne: [i] and because it is better with the restraint of an odious constitution, to absolue one that is gilty, then with ẏ enlarging & amplyfying of it to condemne one that is innocent, [k] therefore there is nothing that requireth more diligence & consideration, then to deale warily where there is great danger to any party, that a man may not rashly determin of a mans credit, bloud, or life: sith these things be of that quality, that being once lost, they can neuer be repaired. [l] But to know whether things bee fauourable or odious, the things are not to be considered in themselues, but theffects which proceed of thē [m], as dower is fauored in rsepect of the widowhood, and desolatenes of the woman whose husband is deceassed. [n]

6 It must likewise be obserued, that when a thing is forbidden, all thinges that follow therof are likewise forbidden: as on the contrary part when a thing is granted, all things are implicatiuely graunted with it, whereby we may attaine to the thing graunted: [o] and if the beginning of things be forbidden, the end also is forbidden according to the rule, *Qui mediatur principium mediatur etiā finem*, [p] and things are principally forbidden for the end to which they are directed. But here a distinction is to be vsed, for where the consequēt is of it self auaileable, and doth not necessarily depend

i l. Arrianus ff. de oblig. & act.

k l. absentem. ff de pęnis.

l cap. vbi mai⁹ sup. de elect. li. 6.

m Alciat. ad l. 2. in num. 44. de verb. oblig.

n L. 1. ff. solut. matrim.

o l. ad rē mobil. ff. de procur. l. 2. ff. de iurisd. om. iud. Temps E. 1. Grants 41. p. bald. ad L. quamuis. c. de fide comm.

depend vpon the power and vertue of the antecedent, it may be of force, though the antecedent be forbidden, [q] for then it is without the cause of the prohibition: but if it depend essentially vpon the antecedent, it is otherwise. For the better vnderstanding of this rule, it is good to bee seene what may properly bee said a principall thing, and what an accessorie. This is principally which is of greatest moment: an accessorie thing is that, which by consequence goeth with the principall. If the Queene graunt vnto one *cognitionem causæ*, her highnesse graunteth vnto him the hearing of the parties, and the examination of witnesses. So the margarites or pretious stones that bee in gold or siluer, do yeeld vnto it, and doe passe with it, because they are but the ornaments thereof, and were applied to the decking and beautifying of it. An accessorie briefely may be taken to bee that, which is adioyned to a thing, and is lesse then the thing to which it is annexed, either in substance or in valew, or in respect both of substance and valew.

q Baldus ad d. Inon dubium 13. oppositione

7 The validitie of an act must be especially fauoured, vnlesse there be a manifest nullitie in the proceeding, [r] Therefore whensoeuer the nullity of an act shall appeare by the proceeding of the parties, which is sayde to bee euident, and notorious, and excluding all cauill,

r Quoties ff. de verb. oblig.

cauill, [f] it is to be held as void, but if the nullity proposed do not so appeare, but requireth a deeper search, because many times error is obiected that the Sute may bee protracted, there consideration must bee vsed. But in doubtfull causes interpretation must bee so made, that the act may rather stand then fall. But the obiection of error is alway to bee fauoured, when the error assigned doth concern the figure and solemnity of iudgment. [t] And therefore he that will dispute of the validitie of an award or iudgement, ought to be wary and carefull, that he put the are to the roote, and that he first examine the iurisdiction and power of the Iudge, because that being the basis and foundation of the iudgement, if that fall, the rest cannot stand. It is therefore to be cōsidered whether he were a competēt Iudge by reason of the cause, of the parties, of the time, and the place. For by reason of the sute or cause, a Iudge may be incompetent, as if the cause belong to a meere iurisdiction, and the Iudge be only a Magistrate in a certaine corporation: or if the cause be ciuill, and the Iudge who taketh conusans of it be Iudge of Gaole deliuery, or if the Iudge be secular, and the cause Ecclesiasticall, or if the Iudge haue some other limited iurisdiction, and he taketh conusans of a cause not comprehended within the lists & bounds of his commission, he

f Bart. in l. 3. parag. condemnat. ff. de re iud.

t 9. E. 4. 3. gloss. in verb. defensiones in de sqpe de verb. figur.

he may bee incompetent also by reason of the place, as if he iudge of causes without his territory, or circuit, or els within his territorie, but yet in a place exempted, he may be incompetent by reason of the time, as if he did iudge before he had his commission, or after his commission expired, or if his iurisdiction were suspended, as at festiuall times, which wee call *dies non iuridicos*, or at such a time, when a greater Iudge was present: or if the Iudge were called to a higher place, or if he were forbidden to exercise his power. And also the person and quality of ỹ party is to be considered, because some by reason of a legall impediment are vncapable of the aduantage of Lawe, as these that are outlawed, excommuncate, and out of the Quenes protection. And there can be no fast roote or sure ground of their proceedings, for such are to be denied audience, because their offence & default ought not to find patronage. Likewise there may bee a default in ỹ party making an Attorney, as if he could not make an Attorney in that cause, or else by reason of the Attorney himselfe, as if he be vncapable of such an office as being not lawfully authorised. But if a iurisdiction bee giuen and granted to one, it is to be intended to bee giuen him *accumulatiue, & non priuatiue*, rather to inlarge, than to diminish his power. And thongh a Iudge of the Gaole deliuerie

being

being appointed and ordained by commission to the hearing of causes cryminall, may not principally inquire of causes ciuil & pecuniary, because it is a Iurisdiction limitted, yet incidently and as it were by the way, for the better examining of capitall crimes, he may take notice of such things. But if the proces & iudgement be framed against one, who is not onely not subiect to his iurisdiction, but is also free from the iurisdiction of euery man liuing, as if the party be dead, concerning whom, no act can be conceiued or vpheld, the Iudgement is void.

Thus haue I shewed to the Student in so generall manner as the order of this treatise doth require, & likewise so particularly, as to his vnderstanding may be plain and manifest, what course he ought to take in examining the cases, reasons, opinions, arguments, proceedings, and iudgements, whereof he shall find great store and abundance in his bookes. Now I will by fauour discend to describe and delineate vnto him briefly (for it is a matter which may be handled plainely and in few words) what course he ought to obserue in the exercise of his study.

Of

Of the exerciſe and conference which the Student of the Lawe ought to vſe.

The fifth Chapter.

Euery art and knowledge produceth effects, and like a good weapon is vnſheathed & vſed in time conuenient, otherwiſe it would be quickely ouercaſt and eaten with ruſt. But there is nothing that with ſo much brightnes and glory illuſtrateth our knowledge, as the orderly and iudiciall applying and accommodating of that which we haue read. For as a man knoweth by his books, ſo hee is known by his practiſe, and by that which he is able to performe in the faculty which hee profeſſeth, and hee which knoweth to himſelfe is not knowne of other men. Wherefore I ſuppoſe it a thing of exceeding moment for the Student, to demeane himſelfe well in his conference and exerciſe, leaſt the multitude of houres which he hath ſpent, do ſlip from him without

without vſe, as the ſand falleth out of the howre-glaſſe, when no man ſeeth or mindeth it.

1 The Student of the Lawe ought to haue great regard of his ſpeech, and that he deliuer his opinion or argument in conuenient and orderly ſort, not after a rude confuſed and impolite manner, and hee who is not onely wiſe but eloquent, is without compariſon the beſt in all profeſſions which conſiſt in practiſe and in the forme of ſpeeche. Therefore Parents and Tutours in the Vniuerſity ſhould haue principall regard, that hee who is to addreſſe him ſelfe to the ſtudie of the Lawe, may bee fitt with a plauſible grace to diſcourſe and diſpute, and euen in the prime of our yeares this care muſt bee had. For by nature wee hold that faſt which in our tender yeares wee conceiue, and the worſe ſort of things doe ſtedfaſtly abide in vs, the better is ſoone turned to worſe, but in this matter it is good to follow the precepts of ſuch as bee neither too curious nor too ignorant: for there is nothing more like a may-game then theſe vainegloricus perſons, who haue decked themſelues with a falſe perſwaſion of knowledge. To the Student of the Lawe I doe therefore thinke this courſe neceſſarie, becauſe hee muſt liue in great celebritie in the

the assembly of the people, and in the middest of the Common Weale. Let him therefore enure himselfe from his youth, to frequent assemblies: let him not bee afrayde of men, nor appalled or tymerous through a shadowed kinde of life, least when hee shoulde make vse of his studie, his eyes daste at mid-day, and all thinges bee newe vnto him, who seeketh that in himselfe, which is to bee done and performed in a multitude: Yet I woulde not haue him too curious and daynty in hys speech, for wee must vse wordes as wee vse coyne, those which bee common and currant. And it is a great errour for a man to estraunge himselfe from the common vse of speech, and to exceeding preciseneste in wordes, and style, doth quench the heate of our inuention, and bridleth the course of our wittes. Yet it is commendable to haue in our discourses both good wordes, and good matter. For *Cicero* dyd not fight with armour of proofe onely, but wyth bright-shyning harneste, when hee dyd not only gayne the admiration of the Romanes, but theyr acclamation also and applause. But let good wordes contayne in them good matter, that the Argument or discourse may not shyne as it were by oyle and oyntment but by

blond

blond and complexion. It is a seauer-like payne to induce a mans speech, loadned with superfluous words. In all thynges *decorum* must be obserued, least that which wee say, doe turne to laughter, or loathing, and purchase the name of folly, a meane must bee kept, least our speech bee drie and saynt, or else too copious, and full of circumstances: yet it is better for the invention to bee abounsant and copious, then to bee leane and poore. Words if they bee not vested with the substance of thinges, are of no force: Retoricke which is the Artificer of perswasion, if it bee severed from circumstaunces, and raunge without learning by a facile kinde of sway. It is called *Atechina*. If it bee applyed to the destruction of good men, it is tearmed *Cacotechina*, but if it be bestowed in vain and superfluous matters, it may bee tearmed *Mataeotechina*, a triuolous labour, and a tryflyng Arte. There is nothing which more beautifyeth a mans speeche, then an apte deuision or partition of the thynges which bee handled, which doth ease the minde of the hearer, prepareth the mynde of the vnderstander, and refresheth the memorie, and (as *Iustinian* sayeth) the

obscu-

obscurity which doth ryse of a confused text, is by separation and diuision dispersed and remoued. [a] And as the diuision of fields doth make the tillage more plentifull and sightly, so doth partition in the handling of causes, adorne and garnish them. These things may bee aptly deuided which haue a seperate reason, and are sorted to diuers endes.

a Iustin. in §. alio. insti. quid modis res. infirm & in §. sed ne in primis de leg.

2 Students shall not doe a misse, if at certaine times they meete amongst themselues, and do propose such things as they haue read or heard by that meane to be assured of the opinion of others in such matters. By this course it may be brought to passe, that euery one may both better vnderstand, and more firmely retaine in memory the thinges which hee hath read or heard, and these things which be to good purpose vttered of others, he may inioy as his owne. For priuate conference there is no time amisse, *Adrianus* the Emperor (as *Dio* reporteth) did handle and discusse points of Lawe at dynner time. *M. Cato* euen in the Court whiles the Senate was assembling, did busie himselfe in reading: and surely, he that hath a mind to learne, may learne at euery place, and at euery time.

3 Gentle

3 Gentlemen Students of the Law ought by domesticall Sports to exercise and confortme themselues to greater & waighter attempts, for it is a point of warlike policie, as appeareth by *Vegetius* to traine younge Souldiours by sleight and small skirmishes for more valorous and haughty procedings, [b] for such a shadowed kind of contention doth open the way, and giue courage vnto them to argue matters in publiche place and Courts of Recorde, and it will not be amisse sometimes to reason together, before men of more reading and greater iudgement which may friendly admonish them, and if they erre reduce them into the right way, It is good to bring such matters into question as bee disputable, & may deserue argument, for it were a vaine thing to make a doubt of that which is plaine and manifest, as whether a rent or annuitie ought to be paid to a dead man, or whether a man may commit an offence against the Law without punishment and such like, wherein if a man should aske any mans opinion, hee might perhaps receiue such aunswere as *Labio* did of *Iubentius Celsus*: *Aut non intelligo quid sit de quo me consulis, aut valde stulta est consultatio tua.* [c] It is euident that one Lawe may with good probability beare seuerall interpretations, but that sence is most to be imbraced which doth take away the occasion of doubting, the way to re-

[b] Vegetius lib. 1. de re militari.

[c] l. Domitius Labio de testā.

moue doubt, is to examine well the reasons of the contrary part, wherefore *Baldus* sayth well.

Ferro aperire viam qui per contraria transit. [d] And to loose doubts is to finde out the truth as *Aristotle* saith, [e] but often conference and priuate debating of points of Law, is the fountaine and originall of exceeding profit, for by it the wit, the memory, and the tongue are greatly furthered and holpen, and a man is made more ready & bold for publike matters, and the truth which is the marke of our study, doth more easily appeare. Wherefore it is not vnfitly said of *Marcellus* the lawier, that euery art by continual exercise doth receiue increase. [f] The wit if it be somewhat dull is by conference more sharpened, if it bee ripe and ready it is a great deale more furthered, and to the memory nothing can be more profitable, which of it selfe is so brittle and tender, that vnlesse it be renewed with continuall exercise, it will easily perish. And in vaine shall a man passe away the night without sleepe, or the day without recreation, in vaine shall he run ouer the volumes of the Law, in vaine shall he inquire after the opinions of the learned, vnles his memory do represent and readily offer vnto him these thinges being with great labor followed and atchiued when time and occasion shall require, I need not shew how much it doth benefit

d In l. precib. c. de impub.

e Arist. Metaphys. 3.

f In l. legatis §. ornatri. de leg. 3.

nesse & polish the tongue: for conference is the proper exercise of the tongue. I said that boldnes is procured by the frequent meeting and communication of students, & I will avow that which I have averred, for as by degrées a man doth converse and talke with his companions and such as be better than himselfe, so by degrées hee groweth bolder, which may bee gathered by that Fable of *Esope*: The Fox did by chance meet the Lion whom he never saw before, & was so affraighted that his senses were almost lost, when hee saw him the second time, he feared likewise, but nothing so much as before, but when he saw him the third time, hee was so little afraid, that he went unto him and talked with him. I said further that it was the high way to discerne the truth of every thing, and therefore *Archadius* sayeth of *Herennius Modestinus* that by much disputation he attained to excellent indgement, & wherfore let the student often resort unto his fellow students, and amongst them let him bee well advised of his choice.

g In l. muner. §. missa. de muneri. & honori.

4 After private and home exercise, publike exercise must insue, which must not be rashly done, but there must be both maturity of yeers and advice, least the unripe braine doe make the forehead to blush, and in stead of praise wee reape contempt. Surely it is the beginning and foundation of impudency, for a man to

pʒesent his ability with audacity, yet as I would not haue too yong a student to enter into this field, so I see no reason that the time should bee too long pʒotracted, and as it were deferred vntill middle age, foʒ by that meane, feare will greatly increase vpon vs: and that which wee ayme at will daily seeme moʒe difficult. Therefoʒe it is good that the fruit of our studie should bee somewhat greene whiles pardon, hope and fauoʒ may be remedy foʒ vs, whiles our yeers may supply ỹ defect of yeres, and our latter paines may amende our foʒmer faults. *Cicero*, being but 26. yeres old did with the great applause of his Auditoʒy handle the cause of *Sex: Roscius*, and if any thing were wanting to his time, that, as himselfe confesseth the yeres succeeding did bring. He that will argue well must bee free from anger, foʒ no affection of the mind is a greater enemy to reason, it leadeth a man out of the way & maketh him many times, both to sine and suffer vndecent speeches. Moderation is farre moʒe conuenient, yea and sometimes pacience, It is good euen in the heate of disputation to yeelde vnto the truth, foʒ obstinately to maintain an erroʒ, is another erroʒ, and where a man must needs bee ouercome it is best foʒ him to yeelde, but impoʒtunate garrulity, is to the aduersary troublesome, to the Judge loathsome, to thy selfe shamefull.

§ It will be very expedient for the Students of the Law to endeauour amongst themselues, if any Lawe seeme to be repugnant and contradictory, to another, to reconcile them and bring them to agreement, and herein let them appeale to the opinion of men more grounded in the Lawe, In the Bookes very often the principall sence of Lawe doth differ from the litterall sence. This was a law amongest the *Romanes*, *Peregrinus si murum ascendat capite puniatur*. Now the case was thus, Certaine enemies did scale the wall and a straunger did ascende to beate them backe. This matter is informed against him, there can be nothing more probably urged against the litterall sence of the Law, then the matter proposed in question, for might not a stranger climbe vp the wall to saue the City? Likewise the case was 3. of *Queene Marie*. [h] That a Maid seruant did conspire with a bad fellow to robbe her Mistres, and in the night she opened the doore and brought the fellow to the bed of her Mistres, who did kill the Mistres, the Maid holding the candle, but saying nothing, the question was whether she was a principall, and whether she were a traitresse, by the letter [i] of the Law she should seeme to be a principall, because she was present at the act, and did concurre with the murderer from the beginning to the end, but by the intent of

[h] 3. Mary 128 Dy.

[i] Pl. Com. 100 4. H. 7. 18. 13. H 7. fo. 3. E 3. Corone 309. Staf. f. 40. 2. E. 3. Endictm. 22. E. 3. Corone 314. & 350.

k 1.E.1.Coron. 395.Stiff.40. 27.Aff.pl.4.12. Aff.pl.43.

law, k the ſhould appeare to be but acceſſory, becauſe the opening of the doore, & the holding of the candle was not parcel of ỳ conſummation of the act, & ſo was the law taken 3. of queen Eliz.

l 3.Eliz. 186.Dyer.

l An adulterer did counſell the woman to murder the child when it ſhould be borne, the child was borne & murdered by the midwife in preſence of the mother, & by her commandmẽt, The mother & the midwife be principall, & the adulterer but acceſſory, becauſe his counſell was before the byrth, & he was not cooperant in the act, but becauſe the force of his perſwaſion and counſell did continue vntill the murder it being not countermanded by him, therefore hee was held and adiudged an acceſſory, but whether in the ſame caſe if the woman bee admitted to be acceſſory, whether ſhe ſhould be a traitreſſe or no, becauſe the principall is no traytor, is a queſtion which may well beare argument on the one ſide vpon the letter of the Law, and on the other ſide vpon the meaning of the Law, but of this matter I haue giuen the Student a ſufficient taſte, and my meaning was in this treatiſe rather to draw the lineaments of things, then to diſcuſſe them to the full. Theſe may ſerue to prepare the minde of the Student to handle ſuch things as may ſeeme to bee contradictory in the body of the Law.

6 That the Student may with more eaſe com-

compas and accomplish the things precedent, it is good for him to haue great care of preserving and continuing his memory, and therfore it is a profitable course vnder titles to digest the cases of the Lawe, into which they may transfer such things as they haue either heard or read, neither is it safe to trust to other mens Abridgements which are little availeable to such as haue read a little, but that which we by our owne sweat and labor do gaine, we do firmely retaine, and in it we do principally delight, and I am perswaded there hath neuer bin any learned in the Law, and iudiciall, who hath not made a collection of his owne, though he hath not neglected the Abridgements of others, The memory is specially to bee helped and increased of the Student, for though it be the gift of nature, yet by industry it becommeth more excellent. For the integrity of the memory it is good to haue sound health & conuenient digestion of the meate, and a mind free from all other thoughts, It helpeth it much to make good diuisions, for he that diuideth things aright, can neuer erre in the order of things. There is nothing surely which doth either more growe by diligence or by negligence more decay then memory, It is not good trusting to a suddaine memory, but a nights rest will adde great strength vnto it.

Of what force memory is by nature and labor *Themistocles* may witnes, who in one yeares space did speake the Persian Language very perfectly, and *Mithridates* who did well vnderstand the two and twentie languages of the nations whom he did governe. *M. Crassus* whiles hee was President of Asia attained to the fine differences of the Greek tongue. *Cyrus* did remember the names of all his Soldiers who were in his Campe. And if memory be necessary for any science, surely to the profession of the law, it is of weighty importance, which because it doth pursue *accidentia*, and *infinita* requireth no help of nature so much as memorie, for the vnderstanding conveyeth the cases to ỹ treasury, out of which it draweth them as often as vse and opportunity doth demande. But if the vnderstanding be good, and the memorie nought, a man shalbe a Lawyer to day & none to morow. Wherefore in this part the student must excell, and that he may excell, he must labor, and that he may labor, he must have healthy which I wish vnto him.

That

That the vnderſtanding of the Student ought to be proportionable to the intendement of the Law.

The ſixth Chapter.

The Law conſidereth things according to publique reſpect, that is, as much as concerneth the Common Weale, not according to th ir contingency in *facto*, which is every mans object, and familiar to common ſence, and therefore needeth not any artificiall handling: And the Students vnderſtanding muſt bee ſo ſequeſtred and refined from vulgar opinion: being the mother of error, and meaſuring things onely by the ſkinne, and colour, that hee muſt comprehend and conclude many thinges, which are very remote from the reach of the ſenſes, and from ordinary apprehenſion: in which contemplation the Common Law of this Realme of England aboue all other doth ſhew wonderfull sharpeneſſe, and a moſt exquiſite conceit, ſubtilizing thinges whereof common ſenſe hath but a confuſe knowledge, being guided by the principall reaſon and inſeperable truth

truth of euery thing, which the vnderstanding strayneth out of the secret and hidden causes of thinges: for as in hearbes, if we touch them outwardly, wee do not find nor feele any moisture in them, but rather take them to be drie, vntill by pressing or distilling of them, wee wring out a iuyce proper to their nature: So the Lawe doth conceiue and conclude many things of ordinary contingents, which common sence cannot perceiue, but rather imagineth them to bee cleane contrary to the truth, wheras they may to a good vnderstanding easily appeare to be true by the certainty & necessary coordination of their causes and reasons. that this may be made euident I mean to annex some particulers for the explaning therof.

1 It is cleere by Law, that a terme and a freehold of the selfe same thing may be both in one man at one time, yet if this be deliuered to a superficiall vnderstanding, it will seeme a parador. Tenant for terme of yeres maketh his executors and dyeth, the executors purchaseth the reuersion, in this case both the terme & fee simple are in the executor to seueral purposes: for the terme shal be assets to the vse of the testator, & the fee simple free inheritance for the vse of the executor & his heires, [a] And if a man be seised of land of an estate for life, the remainder to his executors for yeeres, hee may deuise this term or assigne it. [b] And if lessee for years grant

a 43.E.3.27.& Br.cases.
b 16.E 2.per Herle, Couenants 25.

grant his terme to the wife of him in ỹ reuer-
sion, & to a stranger, the inheritance of the hus-
band cannot extinguish the moity of ỹ terme:
because he hath the inheritance in his owne
right, & the terme in right of his wife. [c] A man
seised of land in right of his wife is attainted
of felony, & the King seiseth the land *pro vita*
viri, the king hath but a chattel, & the wife the
freehold: for if a stranger enter, & the husband
dye, the wife shall haue an Assise. [d]

c 14.El.416. Com. Bracebridges case.

d 4.E.3.47.

2 Likewise it will seeme strange, though in
Law & reason it be true, that a man should bee
remitted to his land to some intēt, & yet not to
another: As if a recouery bee had vpon a false
title against tenant in tayle, the tenant in taile
dieth, the issue entreth, he is in of his first right
against all but onely the recouero. [e] So if te-
nant in taile discontinue, & his sonne & heir ap-
parant disseiseth the discontinuee to the vse of
the father, ỹ tenant in tayle dieth, the sonne by
M. Chookes opinion is in his remitter against
all, but only the discontinuee, [f] the issue in
taile which hath good cause of a Formedon in
the discender, is of couin that A. should disseise
the discontinuee against whom hee recouereth:
hee shall not be remitted in respect of him, but
shal be accompted a disseisor: [g] but against all
others it seemeth that hee is remitted. Te-
nant in taile maketh a feoffement to the vse of
his wife and his sonne being heire apparant
to

e 12.E.4.21. per Choke.

f 12.E.4.21. per Choke. & vide 7.R.2. tit. Entre in le Per, in le collect. de Bellew.

g 18.H.8.3. 15.E.4.4.

to the intaile and dyeth, the issue is remitted against all persons but only the woman. [h]

h 4.E.6.68. Dyer.

A title must be executed to some intent, and yet not executed to another: And therefore if there be tenant for terme of life, the remainder in fee to a stranger, against whom a recouery is had *pro loco & tempore* in a Warrantia chart., brought by a stranger of other land, he in the remainder dyeth, the recouerer is impleaded and voucheth the heire of him in the remainder, and recouereth, tenant for life dieth, execution shall be sued against the heire of the land whereof his auncestor had a remainder, because there was a remainder executed in the father to this intent at the time of the Warrantia chartę brought: [i] but to all other intents it was executory, for it was not executed that the wife might be endowed, nor for him in the remainder to bring a writ of right, [k] But the remainder in such cases is to some intents executed: for if he in the remainder had alienes his remainder in Mortmaine, the lord might haue entred, [l] and vpon such a remainder the Lord may haue a Cessauit, [m] but the heire shall not haue an Assise of Mordaun-cester. [n]

i 15.E.4.13.p Littleton.

k 40.E.3.43.

l 15.E.4.13.

m 27.E.3.87.

n 39.E.3.3. Mordancester 50.

4 A thing may be extinct or in suspence in one respect, and in Esse in another respect: the father being tenant in taile alieneth the land with warranty, and hath a rent charge in fee issuing

F.N.B.196.k.

issuing out of the land of his sonne and heire apparant, which rent discendeth to the sonne, this rent is a good assets for the value in respect of the discontinuance: and yet it is extinct in respect of the issue. [o] A man seised of a rent service is bound in Statute Staple, and after purchaseth the land, out of which the rent is issuing after execution, the rent is extinct, as to the conusor, but in Esse as to the conusee. [p] A corrody is graunted to I. S. for life, who graunteth it backe to the graunter for terme of yeares rendring rent, the corrodie is in Esse as to the payment of the rent, but in suspence as to the taking of the corrody. [q] And it was lately ruled in one *Cairs* case in the Court of wards, that if a man hold land of the Queene by a certaine rent, and the Queene graunteth the rent to a stranger, who graunteth it to the tenant, the rent is extinct as to the payment, but in Esse as to the tenure. The King seised of a Forrest, granted the office of the Forrester to one rendring rent, and he graunteth the Forrest to another, the Forrester forfeiteth his office, yet the grauntor shall have the rent: [r] so that it must needs be that the office to the intendment of law is to that intent in Esse. And if a man grant to another a rent out of his land in fee upon condition, that if the grauntee or any of his heires die, their heyres being within age, the rent shall cease during

o 31.E.3.Garranty 39.

p 4.Eliz. 205. Dyer.

q 20.E.4.12. 22.E.4.17.18.

r 26.Ass.p.60.

during the minority, if the graunter dye his heyre within age, his wife shall haue dower, but *cessabit executio* during the nonage: [f] But in this case it seemeth that if the heyre dye during his nonage, the wife of the heyre shall not haue dower of the rent: because it was neuer leuiable by the sonne, as it was by the father. A man seised of two acres of Land hath issue two daughters and dyeth, now the rent is in suspence, as to one moity, and in Esse as to an other moity. [g]

f 10.H.7.13. per Keble.

g 9.E.3. Charge 4. 9.Ass.p.22.

5 The intendement of the Law is as stronge in a matter of Law, as the truth it selfe in a matter in *facto*: And therefore if A. be disseised, and his brother maketh a release with warranty to the disseisee, and afterward entreth into Religion, this warranty shall be a barre to A. although that he be lyuing: [u] for A. may haue his land by discent, and therefore it seemeth to be reason, that the Warranty should discend vpon him as his heyre. Note here of what validity the intendment of Law is touching a ciuill death. The Wardein of the Fleet who hath the office in fee dyeth seised, and the office discendeth to his sonne and heire, being then in prison, the Law doth presently discharge him of imprisonment, because he is to be at large

u 34.E.3. Garranty 72.

large the better to loke to others, that bée in prison, [uu] A man maketh a Lease to one for terme of life, rendring the first seuen yeares a rose, and if hée will hold the land any longer than seuen yeares, that then hée shal pay foure Marks yéerely: liuery is made, the lessée surrendreth at the end of the first seuen yeares, his estate was adiudged to bée but a terme *ab initio*, and no fréehold, and the Writ of couenant brought against him for not repayring was *qui tenuit ad terminum annorum*. [a] If a man make a lease of land excepting the trées which grow vpon the land, the trées are seuered in Law: for hée hath no reuersion of them, and if hée sell them, and after the sale make a feoffement, the feoffée shall not haue them, because they were seuered by the vendition or sale of them, [b] for by the exception they were seuered from the terme, but not from the inheritance, but by the vendition they were seuered from the inheritance. If the Baylife of the Land do demaund a rent seruice, and the Tenaunt denyeth it, and the Baylife sayeth that hée will distraine for it, and the Tenant sayeth that hée shall not distraine, wherefore the Baylife dare not procéede further to take a Distres, for doubt of death, this is a disseisin of the Rent in the eye of the Lawe. [c] And if a Rent seruice bée warranted to one, and the Land doth escheat, the

uu Plo. Com. Plats c.37.

a 50.E.3.27.

b 20.H.6.22.

c 49.E.3.14. Assise 66.

the Law as *M. Finchden* thinketh transferreth the warranty to the land. [d]

d 45.E.3. Voucher 72. per Finchden.

6 One thing in the vnderstanding of Law may be of seuerall natures in seuerall respects, and so one writ may be two seuerall writs to two seuerall intents: In an action of debt the declaration was of x.li. vpon a sale, and v.li. which he had deliuered to the defendant to redeliuer, and it was held good, because the action was in the *debet* and *detinet*, and the warrantie of attorney and the essoine in this case shall bee *in placito debiti*. [e] Quære, If a man lease land to one for terme of yeares rendring rent, and the lessour graunteth his rent to a stranger, and the lessee surrendreth, this doth not extinguish the rent, for now it is a rent secke which doth not depend vpon the reuersion, [f] And so one man to the vnderstanding of Law may haue seuerall capacities or respects: For if a man disseise a feme sole, being an inheritrix of certaine land, and after hee taketh her to wife, and they haue issue, and the husband is disseised, and the disseisor leuieth a fine with proclamations, the husband dyeth foure yeres after the proclamations, and before the fyfth yeare he passed, the issue being of full age, and after the wife dyeth, and the fifth yere passeth, now the issue is bound as heire to his father, yet hee may haue other fiue yeres, as heire to his mother, to be accompted from the death of his

e 32.E.3. Bre 288.

f 20.E.4.12.

his Father. [g] So if I. S. be tenant of land, for terme of another mans life, the remainder to another for life, the remainder to the said I. S. for terme of his life, or in fee: and he is disseised, and the disseisor leuyeth a fine with Proclamations, and the fiue yeares incurre, now is I. S. bound for the present estate, but if hee in the meine remainder for life dye, hee shall haue other fiue yeres for the other estate. [h] So if a man haue an estate in Land for the life of A. the reuersion to himselfe for the life of B. the remainder to himselfe for the life of C. and is disseised, and the disseisor leuieth a fine with Proclamations, he shal haue fiue yeares seuerally after euery seuerall estate determined. [i] I. S. giueth land to A. his daughter in taile, and hath issue B. another daughter, and dyeth, A. dyeth hauing issue C. a Precipe is brought against C. who voucheth to warranty herselfe and B. as heyres to the donor of the reuersion to haue the warranty paramount, in this case is C. both the [k]vouchor and the vouchee. [k] A terme is deuised to one who is made executor, he entreth, this is an administration to an execution of the terme vnto him, and hee is both deuisee and executor. [l] A. couenanteth by Indenture with B. that the sonne of A. shall marry the daughter of B. and that therefore B. shall giue vnto A. an 100. li. and if the mariage

g Plow. Com. Stowels c. 367.

h Ibid.

i Plow. Com. 368. Stow. case.

k 2. H. 6. 16.

l 20. Eli. Com. Weldens case

did not take effect before such a day that then A. and his heires should stand seised to the vse of B. and his heires vntill the hundred pound be paied by A. his heires or executors: B. dyeth, and after the marriage taketh not effect, the vse and possession of the land vesteth in the heire of B. but Quære saith *Brooke* whether he shall be in ward or no, for he is an heire and yet he is a purchasor. [m] If I. S. be Deane of P. I may giue him land to him and his successors, and to him and to his heires, there hée taketh both as Deane and as a priuate man, and is tenant in common with himselfe: so if a rent charge bée graunted in such manner, hée shall ioine with himselfe in an Auowry. [n] Likewise the Law may deny one a benefite as hée is I. S. and yet allow it vnto him as he is executor to I. N. and therefore if an executour bée Outlawed, or Excommunicated, which be disabilities in Lawe: yet as an executour hée may maintaine an action, because he sueth and is to recouer to the vse of another person. [o] And so an Executour may haue an Action of Trespasse in his owne name, without nameing his companion in the executorshippe, if goods bée taken out of his possession. [p] For hée is possessed of them as a priuate man, but he is possessed of them to the vse of another as Executour. [q] And hée néed not in the case aforesaid name, himselfe executor. [r] For if hée do it

m 3. Mar. Br. Feff. al vses 59. & vide 3. Mar. 128. Dy. Wilf. case & 13. E. 3. Br Exting. 45.

n 24. H. 8. 30. per Pollard.

o 14. H. 6. 14. 21. H. 6. 3.

p 42. E. 3. Executs 67.

q 11. H. 6. 35.

r 12. R. 2. Executors 75.

it may tend to the abatement of the writ according to *M. Kebles* opinion,[f] who saith that the possession of one of the executors (his meaning is as hee is executor) is the possession of both, and herewith agreeth the opinion of *Newton*, but by their fauours though the property of the executors in the goods of the testator be one and the same, yet the possession may be seuerall, for hee that hath the custody of goods may only be said to be in real and actuall possession of the same, which kind of possession is onely heare meant, for which cause a writ of Detinue that concerneth the possession of goods, shall bee brought only against that executor who is possest of the goods.

[f] 16.H.7.4. per Keble 19.H.6. 65. per Newt.

7 [g] The Law may worke seuerall thinges in one instant as if a disseisor make a lease for yeares, and after he and the disseisee release, by one deed to the tenant for yeres, the Law adiudgeth the release of the disseisor first to take effect, and after the release of the disseisee, for there is no priuity nor estate in the lessee, vpon which the release of the disseisee may inure, if the Lawe doe not make such construction. [u] If the tenant for thirty yeares make a Lease for tenne yeares, and they both surrender to him in the reuersion, the surrender is good for both estates, and yet the lessee for tenne yeares, coulde not surrender by himselfe for defaulte of priuitie, but when the other

[g] 21.H.6.1.39 E.3.f.9.H.5.14 11.H.4.46.

[u] 21.El.Com 339.Para.cas.

ioineth with him, his surrender shall bee taken to goe before and the other to followe it. [m] Likewise if the Tenaunt for terme of life surrender to the grauntee of the reuersion, this is both an Attournement and also a Surrender. [a] So if a man haue Land by discent by the Mother side, and leaseth it for yeares, the lesse couenanteth and granteth to pay yearely to the lessour and his heires 11. s. the lessor dyeth, the Law in a moment will conuey the reuersion, to the heire of the part of the Mother, and the twenty shillings to the heire of the Fathers side, because it is a summe in grosse.

m 14.H.7.1. & 4.

a 19.Eliz. 358. Dyer.

b Plow. Com. 132. Brow. case

§ By intendement and admittance of Law a thing suspended may bee reuiued, for if the donour disseise the donee in tayle, and after maketh a feoffement, and the tenant in taile reentreth, now the feoffee shall haue the reuersion. [c] So if the heire in taile entreth vpon the discontinuee, and maketh a feoffement vpon condition, and for the condition broken reentreth, and after a recouerie is had by the discontinuee, the issue in taile is now restored to his first action, and the entaile is reuiued, for by the breach of the condition the feoffement is disanulled. [d] Tenaunt for life, the remainder in taile, the remainder in fee to the heires of the tenant for terme of life, granteth a rent charge in fee, this shall charge

c 9.H.7.25. per Fineux.

d 23.H.8. Br. Restore al' primer acc' 5.

charge the land during his life, but it shall be suspended during the intaile, and after the intaile determined it shall be revived, and shall charge the heire of the tenant for life.[e] e 7.E.4.2.

9 The Lawe altereth the nature or substance of a thing by matter, *ex post facto*, A man seised of Land in right of his Wife, entreth into religion, the wife alieneth, the husband is deraigned, the husband may reenter into the Land. [f] So if a man be indebted to a villaine, who recouereth in an Action of Debt, and after the debtour purchaseth the manor to which the villaine is regardant, and after alieneth it, the villaine may now haue execution. [g] If a man make a lease for terme of another mans life rendring rent, and ỹ arrerages incurre, the lessor shall not haue an action of debt, because he hath a franktenement in the rent, but if Cestuy que vie dye, now is the freehold as to the rent conuerted into a chattell, and now he shall haue an action of debt. f 33.E.3.Entr congeable 52. g 11.H.4. Execuc' 88.

[h] Likewise a diuorce altereth the estate of frankmariage into a bare freehold. [i] If a man adde a condition to a single Obligation after the deliuery, this maketh the Obligation void, for now it is not his deed, and the same Law is of the raising or interlining of a condition after the deliuery of the Obligation, [k] If land be giuen to one in tayle, and the donee giueth the land to the donour, h 39.H.6.26 per Pation. i 7.H.4.16. k 36.H.6.5. per, Aſt. Iuſt.

and to a straunger for terme of their liues, this is a discontinuance conditionall, namely if the straunger suruiue. [l] If the Sherife attache one by force of a Capias that is iustifiable, but if hee returne a Non est inuentus vpon the writ, hee is a trespassor ab initio. [m] If I. disseise I. S. and leuyeth a fine to I. N. and after I. S. entereth vpon I. N. and enfeoffeth mee. and I. N. entreth vpon mee, and I bring my Assise, and I. N. pleadeth the fine in barre, I may auoid the fine by shewing the matter aforesaid, [n] If a fine bee leuyed of land in auncient demesne, and the Lord disanulleth the fine leuyed at the Common Law, hee hath restored the right to him that leuyed the fine. [o] If hee which abateth after the death of the Tenant in fee simple make a Feoffement vpon condition to bee performed within nine yeres insuing, and after the feoffee leuyeth a fine with Proclamations, and the fiue yeares incurre the condition is broken, and the abator reentreth, now the heire of him that dyed seised may haue an Assise of Mortdancestor against the Abator, whereas before he was bound by the fine. [p] Tenant in Tayle maketh a Feoffement and taketh backe an estate in Fee, and bindeth him selfe in statute Marchant, and then maketh a Feoffement vpon condition, and after the recognisance is put in execution, and the tenant in

l 28.H.8.7. Dy. p Fitzh.

m 3.H.7.11.

n 15.E.4.5. per Litt.

o 16.E.2. cont claime 10

p Plow.Com. 358.Stow.case.

in taile dyeth, and the heire in taile being within age entreth for the condition broken, hée is remitted, and the recognisans auoided, but otherwise it had bin if hée had bin of full age: for then hée comming in vnder the Estoppell should not haue auoided the Estoppell, nor by consequence the Recognisans. [q] If my very Tenant be seised of a Manor held of the King in Capite, and of another Manor held of me by Knights seruice, and he is disseised of the Mannor helde of the King, and afterward dyeth seised of the Manor held of mée, whereupon I seise the body of the heyre, and after the heire within age recouereth the Mannor held of the King, nowe the King may haue my Land also in Warde, because the heire shall now bée adiudged to bée in my discent, and the King shall haue the Wardshippe of the body. [r] If my Horse strike one, and after I sell the Horse, and afterwarde the party that was stroken, dyeth of the stroke, now shall the Horse bée forfeited as a Deodand. [s] If a villaine inflicte vpon himselfe a mortall wounde, and the Lorde seyseth his goodes, and then the villaine dyeth, nowe shall the Quéene haue his goods because hée is Felo de se. [t] A man administreth of his owne wronge, and after taketh letters of Administration of the Ordinary, this shall relate to the death of the intestate.

q 8.H.7.7.

r 15.E.4.14. per Littleton Skreenes case.

s Cœn 290. ℞ Cas. dame Hales case.

t Ibid.

u 9.E.4.33. uu 10.H.7. Charge 3.

[u] the heire chargeth land which is after recouered in a writ of Dower, the woman shall hold it discharged. [uu] Thus it is euident that the vnderstanding of the Law worketh especially vpon relations on the first causes of thinges reducing through many straites of colourable pretenses and obiections the right of a thing to him to whom it appertaineth, according to the quality and exigence of the said right and title, so that the vnderstanding of the Student when it entreth into the suruey of these intricate and hidden points, must bee of this ability to compound thinges, and to resolue them by imagination, to buyld and destroy, and to turne sayle by circumstances and occurrences: for there is no case which accidents may not alter, but that one thing may counteruaile another, or that a defect may bee supplied by inforcement of reason, or that a wrong may bee purged and transformed into right, and blacke as it were changed into white, contrary to nature is the worke of intelligence reflecting vpon it selfe, some perhaps carry such spiced and scrupulous consciences, that they cannot abide any fiction or representation of a thing that is not *in facto*, but surely the supposall admittance and intendement of the Law is necessary, without which neither the science of the Law, nor any other which consist in con-

contemplation and abſtraction of the eſſences of things from the confuſion and mixture of circumſtances can bee of any worth or force, And though I muſt confeſſe that every thing, which is imagined to bee done, and is not actually done is a phantaſie, or an vntruth, yet this muſt be granted, that, that which is not really done, and yet for auoiding inconuenience muſt be ſuppoſed to bee done *in facto* is not a fault, though it bee falſe. Many things of this kinde quality haue I before immediatly propoſed which will bee voide of all effect, if you take imagination from the Law: Let it therefore be conſidered what this imagination is whereof we ſpeak, that by the diſcription thereof it may bee better knowne. It may thus appeare vnto vs, *Fictio* a ſuppoſall or admittance of a thing to bee is, *legis aduerſus veritatem in re poſſibili ex iuſta cauſa diſpoſitio*, the diſpoſing of the Lawe againſt a matter of truth in a thing that is poſſible, grounded vpon iuſt cauſe: and there is great difference betwixt imagination and preſumption, becauſe *fictio iuris* the imagination of law *tantum operatur quantum veritas ipſa*, in the concluſions and deciſions of Law, and the Law maketh ſometime *ens ex non ente* in intelligence, though not in exiſtence: but *præſumptio ſtat in dubio* it is doubted of and yet it is accompted *veritatis comes*,

the

the companion of truth, *quatenus in contrarium nulla est probatio*: And the vse of supposall or fiction in the law is only to supply that *quod desideratur in facto*, which is wanting in fact, *vt ex ipsa prodeuntur veri iuris effectus*, that true effects & conclusions of law may proceed from it. The *Logicians* say that the vniuersals are not *in rerum natura*, for if they were they should be *monstra*: for an vniuersal man, or an vniuersall tree comprehending in it all trees, is rather by vnderstanding to bee comprehended then by sence to be compassed, yet I would not haue any imagination to be vsed: but where equity and the orderly coherence of things doth require it.

That

That the Student ought well to conceiue the reaſon and Iuſtice of the Law in diſtinguiſhing *and eſtabliſhing the property and community of things.*

The ſeuenth Chapter.

THe ende and effect of the Lawe is to ſettle the property and right of thinges in them to whome they belonge: And to iudge thoſe thinges common which continuance of time and the entercourſe of parties hath diſtributed and warranted to many, for if all things ſhould bee common, there ſhould be nothing in order, and if nothing ſhould bee common, men would hardly be kept in duty, for then ſhould friendſhip, ſociety, and conuerſation, the comforts of mankind faile, which would turne the whole common weale into wildernes: therefore the moſt prudent and politike Law-makers haue thought it moſt conuenient, that betwirt theſe two extremities a middle & euen courſe ſhould bee taken, whereby property might bee retayned, and yet community preſerued.

Plato

Plato, because once he was of opinion that all thinges ought to bee common, hath therefore many blowes of his Scholler *Aristotle* writing against him in his Politickes, in which Booke hee hath a learned difference, that all that bee common χρῆσιν in vse but not κτῆσιν in possession and title, which notwithstanding is not generally and indifinitly to bee admitted, because then it tendeth to the ouerthrow and vtter subuersion of all common weales: But *Plato* being after better aduised did retractate his former opinion, and laboureth to confute it: for in his booke of Laws he writeth in one place, Let euerie man haue the free vse and possession of his goods by law, whether hee bee citizen or stranger, [a] and in another place: The distinction of demeanes, inheritances, and titles, is the foundation of all priuate contractes, which must bee seuerely established by Law: therefore *meum* and *tuum* ought to be in euery common weale. [b] And againe, Let the inheritances and properties of thinges bee definite and certaine in euerie Common Weale, and let a certaine manner of purchasing them to be prescribed by Law. [c] Thus it is euident that a distinct property of thinges is commodious and conuenient for the good administration of a common Weale: It is of two sorts, eyther an absolute and indefeasible property, or els a qua-

a Plat. lib. 8. de legib.

b Plat. lib. 11. de legib.

c Plat. lib. 12. de legib.

qualified property and *sub modo*. An absolute property is such which is not in any sort subiect to the claime of any other: but a qualified property is that, which one man may claime after one sort, and with a certaine limitation, and another may claime after another manner, and without limitation: As if a man doe hyre beastes of another to manure his land for a certaine tearme, hee that hyreth them hath a property in the beasts *pro tempore*, and therefore if the beasts during the tearme bee taken away, he may haue a generall Repleuine: [d] So hee may haue of beastes which bee in his custody and were committed to his keeping: [e] And so hee may haue a generall Writ of Trespas for the taking or driuing away of beastes in his custody, though the absolute property bee in another man: But if hee which hath the verie property doth take them, an Action of the case will onely lye. [f] And the Bailie of coyne or money, being out of sacke or bagge, hath so farre forth a property in the thing deliuered, that if the Bailie bee afterward attainted of felony, hee shall forfeit the coyne and the money: for it cannot be knowne whether they bee mine or no. [g] And the Lord may haue a Repleuine of the beastes of his villaine, or bondman, if hee haue been seised of his

d 42.E.3.18. 11.H.4.17. 17.E.4.2.
e 47.E.3.12.
f 48.E.3.10. 11.H.4.23.
g 3.E.3.Corone 317.323. 334.

his villaine. [h] And it appeareth by diuerſe bookes, that in an Action of Treſpas, it is no plea to ſay that the property, that is the very property, is in another. [i] And it is ſayde likewiſe, that hee out of whoſe poſſeſſion goods are ſtolne, may haue an Appeale: and he likewiſe may haue an Appeale who is the very proprietary. [k] And therefore it is a firme concluſion in Law, that if chæp be deliuered, or leaſed to one for a certaine time to marle his ground, the deliuery or demiſe is a good plea in barre of an Action of Treſpaſſe, or Repleuine, becauſe hee hath a property *modo & forma* againſt the bayler himſelfe, or leſſour, and may haue an Action againſt him for taking them away within the time. [l]

h 42.E.3.18. N.B.Fitz.69. 9.H.6.25.per Bab. 19.E.3.Repleuin.32. 33.E.3.Rep.43 i 12.H.6.19 27.H.8.21. k 19.E.3. Repleuin 32. l 21.H.7.24.

2 And as the property of thinges may be particular or generall, ſo likewiſe it may be ioint or ſeuerall: A ioint property is where two or more are iointly intereſſed in a thing: A ſeuerall propertie when they haue ſeuerall intereſtes in ſeuerall thinges: and therefore where the property or right in goodes and chattels is ioint, there the Action which is brought to trie the property muſt not bee ſeuerall: And therefore in a Writte of Rauiſhment of a Warde, the defendant ſayd that

that the plaintife had nothing in the seigniory but only in common wyth such a one, and thys was helde a good plea, wythout saying that hee had nothing in the Warde in seuerally, or wythout shewing how he helde in common in parcenary, or by ioint tenaunncie. [m] And so if the property bee seuerall, the Action muſt not bee ioint but seuerall: And therefore if in a Writ of Replevine brought by two for certaine beaſtes, if the property of some of the beaſtes belong to one of them onely, and the propertie of some of the beaſtes to the other, the Writte ſhall abate. [n] Thus it is evident that the Lawe doth maintayne and vpholde the ioynt and seuerall property of thinges, without which the Common Weale could not consiſt. Nowe let vs conſider how the communitie of thinges is likewiſe reſpected by law.

m 6.H.4.6. 12.H.6.4. 22.H.6.14. & 1.E.4.7.

n 18.E.3.32. 3.H.4.12. 34.H.6.37. 2.E.4.23. 10.E.4.2. 8.E.3.15.

3 A man may obſerue and deduce hys accompt from former times, that it hath bin thought verie neceſſarie and conuenient that mutuall commerce and traſique betwirt Nation and Nation ſhould be entertained & continued: [o] And therefore *Plato* wiſely admoniſheth, *peregrinorum commerciareſtab. ne auerſetur*: And *Amaſis* the Egyptian King was ſo glad

o Plat. lib. 12. de legib.

glad of the commerce and resort of strangers, that hee graunted to the Grecian Merchants beeing meere aliens, the vse and exercise of their rites and religion in their owne language: And to the end that straungers might more commodiously practise their negociation in that Realme, there was a certaine place appointed in that kingdome, namely *Naucrate* for the receit of forreine wares, [p] which course is greatly approoued by *Aristotle*, whose opinion is, that a principall Citie must bee erected in some conuenient place whereto things which bee necessary to this lyfe may bee aboundantly conueyed, and to which there may bee easie passing for them that be in league with vs, and hard for others: [q] and therefore sayeth he it ought to bee scituate neere to the sea. [r] And doubtles iuſt was the quarrell and complaint of the people of *Megara* against the *Athenians*, who had vterly barred and secluded them from theyr hauens, and from all marting with them: [s] for hee which breaketh and dissolueth the reciprocall entercourse of nations, is an enemy to the society of mankind. And *Strabo* in his laſte Booke noteth it as the property of the *Barbarians*, to repulse and keepe out of their Territories all straungers, which customs is against the Law of Nations, what

[p] Herodot. lib. 2.

[q] Arist. 5. polit cap. 7.

6. polit. ca. 7. & lib. 7. ca. 4. & 5.

[r] 7. polit. ca. 5.

[s] Plutarch. in Perie.

what a great point of inhumanity is it to deny them the ſea which by nature is open to all: [t] yea, it ought to bee as common as the vſe of ayre: [u] and all creatures may claime the free vſe of that, as may appeare by that ſaying of *Dædalus:*

t Vlpian lib. 3. Digeſtor. tit. 4. c. 14.

u Celſus l. 43. Digeſtor. tit. 8. c. 3.

Omnia poſſideat, non poſſidet aera Minos. [uu]
Though Minos all things do poſſeſſe,
the ayre is not his owne.

uu Ouid. in Metamorph.

And the ſhore of the ſea is by nature common to all, as *Neratius* ſaith,[a] and though Empires and kingdomes be diuided, yet the vſe of ſuch things remaineth ſtill in common, [x] therefore the ſaying of *Maro* in the perſon of one of his trauailers was vttered with good reaſon:

a c. 14. tit. Digeſtor. de acquirend. rerum dominl.

Quod genus hoc hominũ, quæue hunc tam barbara morem
permittit patria? hoſpitio prohibemur arene.

but yet to enemies, becauſe in them the leagues of friendſhip doth faile, the right of fellowſhip ſhould not be graunted. For groſſely are they deceiued, who would without reſtraint haue all things common, of which error the Anabaptiſts are patrons, and doe endeauour to ground their error vpon ſcripture, but falſly, for *Abraham* and the Patriarches were men of great riches: *Ioſua* did publikely and priuately diſtribute his goodes to the people of

Israell. There be in *Solomon* precepts of the property of thinges. And God woulde not haue said, Thou shalt not steale, if he would haue had all thinges common: for to steale, is to take away goods wherin others haue a property, and therefore theft is said to be *contrectatio rei alienæ animo furandi, inuito illo cuius illa res est.* [b]

b Stamf.fo.24
c 18.H.6.29.& 92.17.E.4.7.7. H.7.13.18.E. 4.4.
d 9.H.6.36 27 H.6.10.15.E.3 Cõmon 122. Aff.pl.36.16. Aff.pl.34.H.6. 13.17.H.6.34. 4.E.4.29.10.E 3.15.10.E.3.56 4.E.3.4.15. Aff. pl.5.14.E.3. Barre 277.17. E.2.Cõmõ 23. 22.H.6.51.
e N.B.Quod permit. 11.Eli. 281.Dy.
f 13.E.45.10. H.7.13.7.E.4. 10.48.E.3.17. 30.E.3.20.3.H. 6.12.34.H.6.43
g 33.H.6.26.8 E.4.9.6.E.3.23 2.E.4 9.10.E.3 Admeas.8.20. E.3.22.11.H.4. 22.2.H.4.11.

3 But yet the rule of charity and society requyreth that some thinges should be in regard of vse and benefit common to other, and therefore by customes of Countries, and by Lawe, the offspring of these customes, the earth is in part appropriated vnto some, and in part participated and made common to others. Therefore the Common Lawe doth well allowe and maintayne the common vse of certaine things, as namely, the vse of fishing in another mans Pond, [c] of pasture for his beasts in another mans soyle, [d] of taking of an estouer or mayntenance of wood in another mans groue, [e] of hauing a franchise and liberty in another mans Manno^r or Seignior, [f] and lastly, of hauing a way through another mans ground. [g]

4 Some things there are, the property whereof the Lawe cannot vest in any, and therefore it leaueth them to the occupant, that is in plaine tearmes to him that can seise

seise them, as things which are by nature *feræ naturæ*, as beasts, birds, or fishes, being in their owne liberty. And as to the property it is not materiall whether they bee taken in a mans owne ground, or in another mans, and such things bee his no longer than they bee in his possession or custody: for when they haue escaped and recouered their naturall and pristinate liberty, then they cease to bee his, but when the Law vnderstandeth such things to haue recouered their naturall liberty, when they are either past the view, or else being in view they bee hard to bee followed, and recouered. The nature of Bees is wild, and therfore when a swarm of them lighteth vpon thy tree, they are no more thine before they be couered with thy hyue, [h] then hawkes, which haue made their neasts in some of thy trees, or doues in thy doue-house for though the young birds be thine, whereof thou maiest bring an Action of trespas, *quare vi & armis pullos esperueriorum suorum in bosco indificantium, or columbas columbaris sui cæpit*, which writ is not only maintenable, when ẏ doue-house is broken, or the dore open, and the young doues bee taken out of their neasts, but an action of trespas will also lye for ẏ trobling or hurting of the olde doues within the doue-house, though they be *feræ naturæ*, as wel as for chasing and killing conies in a mans warren, [i]

h Iustinia. lib. Institut. 2.

i 16.E.4.7.22. H.6.6.67.18.E. 4.8.

yet hée ſhall not vſe this woꝛd *ſuos*, [k] in his writ, yet becauſe hée hath them by reaſon of his Warren oꝛ Doue-houſe wherein he hath a pꝛoperty, hée ſhall haue an Action foꝛ the chaſing oꝛ the taking of them. [l] The nature of Cranes and Doues is wilde: neither is it materiall that by cuſtome they are wont *anolare & reuolare*, to flye from home, and returne home. And in ſuch things which are tame, and by cuſtome are wont to depart and yet to returne, this rule is allowed, that ſo long they may bée ſayd to bée thine, as they haue *animum reuertendi*. And felony cannot bée committed in the taking of beaſts that be ſauage, if they be ſauage and vntamed at the time of the taking, noꝛ foꝛ taking of Doues being out of a Doue-coate, noꝛ foꝛ taking of Fiſhes being at large in the riuer, foꝛ ſuch taking is not *contrectatio rei alienæ ſed quæ eſt nullius in bonis*. [m] And the ſtealing of a Doe which is tame and domeſticall is felonie, but then ſaith *M. Stamford*, it ſéemeth that hée that ſtealeth it ſhould haue certaine knowledge that it is tame [n], but if the Doe be killed and then ſtolne, this is felony. [o] And though a man may haue foꝛ the taking of his Ferret an Action of Treſpas, becauſe hée is pꝛofitable to take Conies foꝛ the vſe of his maiſter. Yet becauſe a Ferret is *feræ naturæ*, a man cannot haue an appeale of felonie foꝛ him

k 43.E.3.24. 22.H.8.per Newdig.

14.El.307. Dy. l 8.E 4.5. 22.H.6.55. N.B.Fitz. in le bée de treſpas.

m 18.H.8.a. 22.Aſſiſ.pl.95.

n Stamf.lib.1. c.16.

o 10.E.4.15.

him, no more than hee may haue for the stealing of his Hawke and Popiniay, or such like, for such things are *feræ naturæ*, and a man can haue no property in them, neither can hee say in his Writ *feras suas*, for that implyeth a contradiction, and because they are sauage, therefore they are not tythable. But when such things are made tame by my labour and cost, the property of them is changed, and the nature altered, and then if a man take them out of my possession, I may haue an Action. For a man may haue an Action *quare molossum suum cepit*, because he is necessary for the keeping of his house, or the keeping of his folde, or a fish-pond. ¶ But the nature of hens and geese is not sauage, and therefore if they shall flye away, though they be past thine eye-sight, notwithstanding in what place so euer they bee, they cease not to bee thine: and who so euer detayneth them, is punishable by way of action. ¶

p 12.H.8.3. Fillowes Case. per Brooke. Pollard. Brudnell. Newport & Newdigate.

¶ Iustin. lib. Institution. 3.

4 In the Ciuill Lawe there is this case, certaine Sheepe were carryed away from the Shepherd of A. by Wolues, an husbandman of the next village hauing pursued them with great and strong doggs which hee kept for the safetie of his beastes, recouered them from the Wolues, for the dogs did enforce the Wolues to leaue them, and when A. did demaund the Sheepe, the question was whether the Sheepe

became his that did so recouer them, & remained still the thæpe of A. for the dogges did get them by a kind of hunting: yet *Pomponius* thought in this case, ỹ as those things which are taken either on sea, or on land, do cease to bee theirs that toke them, when they are come to their naturall liberty, so by the same reason our goods taken away with beasts liuing either in the sea, or on the land, do cease to be ours when the beastes that tooke them haue escaped our pursuit. And who will affirme that that continueth to bee ours which a bird flying hither and thither, caryeth out of our barne, or out of our field, or by any meanes carrieth it away from vs, if therefore it cease to be ours when it commeth to the mouthes of beastes, in common appearance, irrecuperably, it must needs become his who first recouereth it, and so bee made proper to the occupant, euen as a fish, or byrd, which hath escaped our power, if it bee taken of another, is straightway his, but hee thinketh it more reasonable that it should continue ours, so long as it may bee recouered.[r]

[r] Vlpian. li. 19. ad edictum.

5 Likewise a thing *pro derelicto habita*, waiued & forsaken, is *nullius in bonis*, as when a man for feare of a tempest casteth his things into the sea, or some danger being imminent, leaueth them vpon the land, or els of his own free will leaueth that which is his owne *sine*

spe

se rehabendi. [s] If a thing bee fallen out of a chariot or wagon, it may bee sayd to be lost or wained. [t] And if a man haue a liberty to take waifes and straies in his manor by prescription, and certain beasts bee wained or do stray within the precincts of his Manour, and a stranger taketh them, hee that hath the manor shall not haue an Action of Trespasse generall for the taking of them before hee hath seised them, [u] though the Law bee taken to be otherwise by some. [uu] But 13.E.3. a Writt was maintained by an Abbot by reason of his franchise in the like case, but that was an action vpon the case, which procureth that the property was not in him before seisure. [x] But it hath beene held for cleere Law, that felony is not committed in the taking of treasurie found, wrecke of the sea, wayfe and stray, and such like, vnlesse they haue beene before seised, and the reason is, *quia dominus rerum non apparet, ideo cuius sint incertum est*, and therefore the punishment in such cases is by fine, and not by the taking away of life and member. [y] Such lands, the property whereof hath bin executed by possession, cannot be waived but by matter of record. [z] And it is a certaine rule and sound reason, that such thinges as cannot passe but by matter of record, cannot bee wayued or relinquished, but by matter of record. [*]

[s] 29.E.3.49. 12.E.4.5.
[t] Vlpia.li.56. ad edictum.
[u] 16.Eliz.138 Dyer.
[uu] Ibid. & Fi. N.B.19.
[x] 12.E.3. Briefe 678.
[y] 22.Ass.pl.99.
[z] 7.E.4.7. & 20.
[*] 8.H.4.13.

6 Such thinges are said to be *nullius in bonis*, which haue not from time out of minde been knowne to belong to any man, as treasures hid in the earth, as when any money, gold, siluer, plate bullion is founde in any place, and no man knoweth in whome the property is. The Law bestoweth it vpon the King, and it becommeth *res fiscalis*, parcell of the treasurie royall, and therefore it is called in the Common Law *treasure troue*, that is to say, treasure found, whereby it appeareth, that the King is not proprietary of it, till it bee founde, but it is before *nullius in bonis*. But if any mine of mettall bee found in any ground, that alway pertaineth to the Lord of the soile, except it bee a mine of gold or siluer, or a mine which hath vaines of gold and siluer, which shall alway be the Kings in whose ground soeuer they bee found: [a] and in auncient time, as *M. Bracton* saith, it belonged by the Law of nature to him that found it: but now by the Law of nations it is *res fisci*, and belongeth to the King: but heretofore it hath beene ruled *quod thesaurus non competit regi, nisi quando nemo scit quis abscondit thesaurum:* [b] for then (as *M. Stamford* collecteth) it shall belong to him in whom the propertie was before, and if hee dye before such finding, his executors shall haue it. [c] And because there might befall some square or variance

a Exposit. des termes de ley, Plow. in le cas de informat. pur mines.

b Fitz. Coron. 446.

c Stamf. lib. 1. cap. 42.

ance betwixt the Lord of the soile, and the king about the property of such treasure, it is therefore decided *quod thesaurus competit domino regi & non domino libertatis si non sit per verba specialia aut per prescriptionem.*[d] d Fitz. Coron 281.436.

7 And things are said to be *nullius in bonis* by common consent, as things consecrate & religious: for though the goods belonging to a Church, as bells, seruice-bookes, surplices, chalices, & other things, must be supposed in a writ of trespas brought by the churchwardens to be *bona parochianorum in custodia nostra existentium.* [e] Yet in that the lawe giueth the action to the Churchwardens, and to their successors, for the recouery of such goods vniustly taken, and doth giue the property to the parishioners, this property must bee intended to bee to the vse of the church, that is, to the vse of the parochians, as they are the church: for though it be true that *Rolfe* saith, 8. H. 5. that a church parochiall can not otherwise be intended, but a house made of stones, and walls, and rose, and such materiall things which cannot take by gift or feffement no more than a church conuentuall which lacketh a soueraign: [f] yet it cannot be denyed that the parishioners are incorporate for the purchasing of personal things, and that in regard of such capacity, they may bee said to be the church it selfe, as well as the Parson and his successors in ancient time were said to bee the

e 8 E. 4. 6. 37. H. 6. 30. 12. H. 7. 17. 8. H. 5. 4. 11. H. 4. 11. 19. H. 6. 66.

f 8. H. 5. 4.

Church

Church in the purchase of land and realties, which may appeare by this case: Land was deuised to one for life, the remainder to another for terme of life, the remainder to the church of S. Andrew in Holborne, this adiudged to be a good deuise,[g] and this must needs go to the parson and his successors, because the Churchwardens and parishioners were neuer admitted by law to purchase land to the vse of ye church. And *Belknappe* said, that the cloathes of a dead man being found dead in the field, did belong to his executors if he had made a will, otherwise that they should be deliuered to ye church for celebration of diuine seruice for the soule of the dead: for his meaning is (as I take it) that the Ordinary should intermeddle with them for the disposing of them.[h] And if a man take a coate-armor which hangeth ouer a dead mans tombe in a church, the inditement must be *bona executorum*, of the dead man: but if a graue stone be taken away, the inditement must be *bona ecclesiæ*.[i]

g 21. R. 2. Deuis. 27.

h 48. E. 3. Endictment 27.

i Lambard Eirenarc. 494. 495.

That

That the wordes or termes vſed in bookes of law ought *to be vnderſtood and applyed* as the law doth expound and conceiue them.

The eight Chapter.

IT is not poſſible for a man to bee ſkilfull in any Science, vnleſſe hee do perfectly know the wordes which do occurre and are often vſed in that Science. I doe not meane wordes of Art onely, which by Lexicons and explanatory bookes may eaſily bee conceiued, but ſuch as doe import and concerne the obiects of the ſcience, about which it is principally conuerſant. To purſue therefore briefely an interpretation of ſuch wordes as in the law are materiall. I take it not to be diſſonant from order to beginne with the diuerſitie of Lawes, and to ſhew how theſe wordes, the law of Nature, the law of Nations, the law Ciuill, the Common law, the Statute law, the cuſtomary law *inter merum*, and *æquum & bonum*, are vſed in the law

Law bookes, and are to be vnderstood, that so it may be knowne how and in what sort one Lawe differeth from another, and of what qualitie and condition that Law is to which the Student is addicted, or vpon which he doth grounde his reason. The Law of Nature therefore is that, which the Nature of Natures, or the God of Natures of the Philosophers called *Natura Naturans*, hath taught all creatures that haue sence by the mediation of nature created of which they consist: for this Lawe is grounded in the roote and inward parts of Nature, and therefore one sayeth well, *Habemus non scriptam sed natam legem, quam non didicimus sed hausimus*: This is according to *Iustinian* his definition, in his Institutes, to whom *D. Hotoman* may seeme at the first to doe iniurie by obiecting that by this definition, to eate, to sleepe, to moone, and to rest, are parcell of the Law of nature: and though this be aunswered by some, [a] that these things are excluded from the definition, by this word *ius*, yet what absurdity would follow if such things should bee graunted to bee parcell of the Law of Nature, why not as well as the repulsion of force, which apparantly proceedeth from the Lawe of Nature. For in truth there is no difference in the effect betwixt externall force, and the force which a liuing

a Goul. 1. lect. iur. c. 19.

liuing creature hauing sence should doe to it selfe, if it should not performe these aforesayde actions of Nature, as to eate, to slepe, to meane, and to rest, whereby Nature is preserued and kept in time. This is playne in men, who by the Ciuill Lawe are said to kill, in denying nourishment to themselues, or others, whereby life and nature may bee maintained. And *Iosephus* writeth well, that it is against the nature of liuing creatures for any of them to kill it selfe. [b] But *D. Hotom.* doth further cauill, following his forefather *Valla*, that Lawe cannot bee applyed to beastes, no more than iniurie may bee done vnto them. To this may bee replyed, that iniurie in some sence may bee done vnto them, if iniury bee taken for that *quod iure non fit*, which is not done according to that Lawe, that is prescribed vnto them by nature. But if it bee done according to the rule of nature, though it differ from the nature of all other things, yet it is not iniurious or vnnaturall, for example. All birds except the Cuckoe, doe foster and bring vp their younge, these do it by the Lawe of Nature, this doth it not by the Lawe of Nature, and yet doth no iniury to her younge, because shee doth it by the instinct and priuiledge of Nature. This Lawe is of all most auncient, being connatural

[b] Ioseph. de bel. Iudai. 3.

naturall vnto vs, and following immediatly and indissolubly, the very principels of Nature created, being an euen iuuill, and most iust Lawe in it selfe, though wrested and corrupted by the corruption of things: but in what kinde so euer it is vniformely executed, it is without all blemish of vniustice, as in mankinde it is vniformely apparant, that euery man is inclined by nature to prouide from posteritie. But when some prouide too much, some too little, some with pinching for themselues, some in seeking to make their children farre greater than themselues, this is not vniforme, this therefore is vniust: neither doe I dissent from the opinion of them that thinke the Lawes of *Moses* doe imitate and resemble the simplicitie, integritie, and vniformitie of the Lawe of Nature.

The Lawe of Nations is that which naturall reason hath propounded and appointed in common to all men: I doe not saie that nature hath appoynted, but nature with reason, or naturall reason. And it is also seuered from the Lawe of nature, because it is appropriated onely to men, yet communicated to all nations, for there is no Nation which vseth it not. The distinguishing of Demeines, the diuersitie of Realmes and

king-

Kingdomes is parcell of the Lawe of Nations. Likewise warres, contracts, and such like, are braunches of that Lawe, the definition of it may bee shortly this, a Law in which all Nations doe consent. But this pleaseth not *Bodinus*, for sayeth hee, all Nations haue consented to Idolatrie, yet who will accompt that a Law? [c] But this difinition is meant of humaine thinges, not of diuine, for who will so vnderstand it? For all the Nations of the world may not prescribe a Lawe to God, nor capitulate any thing touching these thinges which concerne him, hee is a Law-maker for himselfe, and therefore hath said *Quod præcipio tibi hoc tantum facito, non addas, nec minuas*. [d] But in humane thinges that which all Nations doe allowe for a Lawe that is for gouernment and publique respect (for which intent the worde Lawe is vsed in the definition) that is to bee receiued and acknowledged for the Lawe of Nations.

[c] Bodin. lib. de Repub.

[d] Deut. 12. v. 32.

The Lawe Ciuill I doe not take so largely as some doe interprete it, to bee a Lawe which euerie Citie or people hath appropriated to it selfe: for though the originall denomination of it came from this worde Citie, yet by that was meant onely one Citie where that Lawe was practised and obserued, and

and that was the auncient Citie of *Rome*, for which cause the Ciuill Law is at this day called by some *ius Romanum*. [e] And though many Cities and Commonweales be now gouerned by that Lawe, yet therefore it cannot bee said to bee *ius Ciuile*, sith it had the name before.

e Alber. Gent. lib. 1. cap. 1. & epistolar. 2. c. 14.

The Common Lawe is that which by common vse or common reason is made, not by common assemblie, as Statutes or Acts of Parliament are established: And it differeth likewise from statute lawes in this, that in such lawes there are many times prouisoes and exceptions of certaine persons. But the Common Lawe bindeth all alike, and is not applyed and vsed as a plaister to one part, but as a strong purgation to all the partes of the bodie politique, and it may challenge a thirde difference, for that the Common Lawe ariseth from the people and multitude, but the Statute originally from the King, because before euery Parliament, writs of summons issue from the King for preparation to that solemne meeting of the States. Againe, the King may dispence with penall Statutes, [f] by clause of *non obstante*, but hee may not alter the course of the Common Law, [g] though the word of Common Lawe extende by the generalty of it, to any

f 34 H. 8. 25. Dy.

g 11. H. 4. 73.

law

law that is not commonly vſed in any place, yet vſe hath reſtraigned it to the Lawe of this realme of England, to the dominions of which it is confined, and beyond this meaſe ſtretcheth not her feathers.

The cuſtomary Law is nothing els but a cuſtome long time continued, which may bee thus more fully defined, Cuſtome is a law not written, by the manners and vſage of certaine people or the greater part of them vpon good reaſon and iudgement, begun, and continued, and hauing the force of a Law. I ſaid (a Law not written) becauſe the bare memory of man is the regiſter of cuſtomes. I ſaid by the manners and vſage &c.) becauſe no cuſtome doth grow without the conſent of certaine people, or the maior part of them, I ſaid (begunne vpon good reaſon and iudgement) becauſe ſuch thinges as are introduced by error, are not to bee obſerued. I ſaid (continued) becauſe without diuturnity of time, cuſtome can haue no force or ſtrength. I ſaid (hauing the force of Law) becauſe it muſt bee of equall power in the place where it is vſed with the Law. A cuſtome againſt the Law of nature is of no force, becauſe *naturalia ſunt immutabilia*: A cuſtome againſt the Law of nations is of no validitie, becauſe that is grounded vpon the Law of nature. A cuſtome againſt the Law poſitiue is either againſt publique vtilitie or priuate

profit, if it be derogatory to publike vtilitie, it is void: if it bee onely against priuate profit it is good and effectuall, and a custome only disallowed and defeated by Law, cannot bee continued or reuiued by any meanes. It hath bin questioned how many Actes or deedes of men be required to bring in a custome, and the opinion of the most learned hath bin, that so many actes and so notorious, that the thing which is done may be intimated into ỹ notice of the people, so that it may seeme to be allowed by the secrete consent or likeing of the people. But one notorious act cannot induce a custome, for that is against the name of a custõe: for *consuetudo* is nothing els but *communis assuetudo*. It hath bin also doubted whether an act contrary to a custome doe interrupt the custome, to which it may bee thus answered, either the custome was not yet perfitte, and then it doth interrupt the custome, for the consent of the people did not yet euidently appeare, or else it was compleat and perfit, and then it cannot bee defeated by one act, but by so much time and in such manner as it was induced.

Iuomerum is that Law which hath no mixture nor regard of circumstances, but groundeth a rigorous conclusion vpon things done without further examinatiõ how or why they were done, as if a man sell a Lease of Land

for

for yeares, and certaine cloth for tenne pound, the contract is entyer, and if the title of the vendor be not good as to the Lease, yet he shall haue the intire summe though the vendee be dispossessed of the Lease at the time of the action brought for the mony, [h] because in strict reason the contract was intire, so if a man sell his owne horse, and the horse of I.S. to A. for tenne pound, and I.S. taketh away his horse, yet an Action of Debt will lye for the whole summe, because the contract was in it selfe intire. [i] But if a man retaigne one in seruice for a yeare, for tenne pound to bee payed at two feastes of the yeare, and the Master dyeth after the first feast, and before the latter, the Seruaunt shall haue his wages but for the first Feaste, because the contracte was at the first time apportioned. [k]

h 24.H.8.Br. Contract 35. 7.H.7.

i 30.H.8.Br. Apportion 7.

k 27.E.3.Br. Apportion 6.

The Law which is tearmed *æquum & bonum*, is that which doth mildely interprete, amend, and mollifie the hard and rigorous speaches, and censures of the other Laws: and is sometime sharpe and seuere, where the other Laws are remisse and conniuent: as may appeare by that saying of *Salust*, sentencing the proceeding of the Romaines in a matter of estate *sit rem magis æquo bonoque quàm iure gentium Bomilcar comes eius qui Romam fide publica venerat*, & this is not so much comprehended

in writing, as in the true vnderſtanding of that which is written. It is necellary by the iudgement of another Law, which ſaieth *Eſt nihil facile mutandum eſt ex ſolemnibus, tamen vbi æquitas euidens poſcit ſubueniendum eſt.* [l] and againe *iuſtus Index æquitatem ſolutiũ ſequitur.* [m] This ought to haue place ſometimes in the precepts, rules, and caſes, of the ciuil and common Laws: yet it hath more affinity with the Law of nature, and the Law of nations, which are ignorant of the knots, and intricate points of theſe aforeſaid Lawes.

l l.283.de Reg.iur.

m l.14.de reg. iur.§.de relig.

Now that wee haue diſcourſed of theſe ſeuerall Laws, it remaineth that wee ſhould ſhew what things are the principall obiects of the Law, which may bee reduced to two heads, for either they are reall or perſonall. That which is reall, is either land, or that which iſſueth out of land: land is either firme and fixed earth, or that which is immediately and coherently annexed to the earth, as houſes. By the differences of this diuiſion a piſcharie or fiſhing is excluded, whether it be *libera piſcharia*, that is a liberty of fiſhing in another mans ponds, or waters, which hee hath in common with others. For 11. perſons may haue a fiſhing after that ſort in one riuer, and it is therefore called *libera* becauſe none may diſturbe them to whome the fiſhing belongeth: [n] Or *ſeperalis piſcaria*, which in our bookes hath ſeuerall

n 17.E.4.7.

nerall significations, for either it may signifie a seuerall fishing, which one man alone hath in another mans soyle. ° For els where a man hath a seuerall fishing to himselfe in his owne ground, and so it is a thing compounded of water and of earth, and therefore it is said, that where a grant is made of a stagne or pischary, the land passeth. ᵖ And in a Formedone brought of a gorse, which in Latine is called *gurgei*, a gulfe or deepe. Yarmouth, wherein fishes are commonly taken, the demandant shall recouer the land and soyle it selfe. ᵠ And it hath beene adiudged that a fishing so taken lyeth in Tenure. ʳ And a Writ of Aiell was brought of a fishing as a thing lying in demesne. ˢ And also of a stagne or poole: ᵗ But it cannot bee termed land, because the water is not coherently fixed to the soile, but otherwise it is of an acre of lande which is couered with water: for though that be ouerflowed with water, yet it is not naturally ouerflowed, as a ponde or fishe-poole is. ᵘ And therefore it is said 12.H.7. that a man may haue a *Precipe de vna acra terræ cum aqua cooperta*, or *de vna acra terra* generally at his election. ᵘᵘ But a tenement cannot bee sayd to be freehold, except it touch the earth, and therefore a chamber built vpon a hall or parlor, cannot bee sayd to bee freehold, because it cannot be perpetuall, for the foundation may perishe,

° 11.H.6.29.

p 4.E.3.3. Fetlement 79.

q 14.E.3. Formedon 34.

r 40.E.3.44.

ſ 20.E.3.Brie 837.

t Temps E.1. Brie 861.

u 18.E.44.

uu 12.H.7.4.

and for that cause it cannot be demaunded by Plaint or Writ. [a] Yet 9.E.4. an exchaunge was made of Land for a chamber, [b] but that proueth it not to be freehold, for an exchange may be of things of diuers natures, as of land for rent. [c] And so of a rent for a common. [d] A Castell whether it bee a thing either of it selfe, or parcell of a seigniory or Manor may well be called land or freehold, [e] For though land may not be parcell of land no more than one Leete or Hundred may be parcell of another. [f] Yet land may be parcell of a Manor. [g] And a parke may be parcell of a Manor. [h] And land may be parcell of an Honor. [i] And of a Castle. [k]

a 3.H.6.1. Plaint 11.
b 9.E.4.40.
c 3.E.4.10.
d 9.E.4.21.
e 7.H.6.36.
f 3.Mar.Com 168.Hilles cas. 7.E.6.Com fo Partridg.c.23. H.8.B.Fee.53.
g 4.E.4.16.42. E.3.22.44.E.3. 40.Fee. 53.lib. Fundā. leg. fo. 70.
h 3.E.3.Br. Iurif.39.
i 26.Ass.pl.60.
k 4.E.4.17.

It is nowe shewed what may properly bee called Land, and it is not impertinent to declare how many sorts of land, which wee haue before called firme ground, may bee demaunded by Law, of which the Law hath a seuerall contemplation. Land therefore as it is subiect to the consideration of Law is firefold, *Arua*, *Florida*, *consita*, *compascua*, *mineralis*, *infrugifera*. *Arua* is the arable ground which is tilled with the Plough. *Florida*, the garden ground, which procreateth flowers, herbs, and all such things as the Bee doth feede vpon, *Consita*, is the wooddie ground which is throughly repleniſhed with Trees, Plants, Shrubbs, and such like. *Compascua* is that which bringeth forth

feyth graſſe and fodder. *Minerales* it that, wherein mines are contayned whether they be regall mines, as mines of Gold or Silver, or baſer mines, as braſſe, leade, copper, tinne, coales, or the like. *Infrugifera* is that which is barren, and cannot be helped by manurance as the ſoile where ruſhes, weedes, ferne, and ſuch things do grow, and it is good to know the diuerſitie of theſe ſeuerall ſorts of grounde, that when ſuch thinges are to bee demaunded by writ, they may be demaunded by their proper names and kinds, and therefore if a feoffment be made of two rodes of land, and after a houſe is built thereupon, and part of it is become medowe, parcel paſture ground, and parcell wood, the demand muſt be by the name of a houſe, medowe, paſture, and wood, [l] and there is a writ in the Regiſter, *de minera plumbi & cuiuſcunque generis metalli cum pertinentijs.* [m] and *ruſcaria* the ſoile where ruſhes do grow muſt be demanded by number of acres. [n] And where a ſtagne hath bin, or land couered with water, if the water be turned out of the courſe or dried, the land may be demaunded by the name of medow. [o]

l 3.H.6.2.

m Regiſt.165

n 16.Aſſ.pl.9.

o 33.H.3.Intre 80.

That which iſſueth out of land, or the profits of land are of three ſorts, Naturall, Induſtriall, and Artificiall. The Naturall profits of Land are ſuch as doe riſe by the force and benefit of Nature principally, and not by

the diligence and labour of man, as apples, hearbes, trees, and such like. Industrial profits are such as do principally require the diligence and culture of man, which vnlesse it bee continually applyed, *natura nihil operatur*, as corne, hoppes, woad, saffron, and such like. Artificiall profits are these, which are reserued, graunted, or issuing out of land by the Act of man, and the approbation of Law, as a common of pasture, a warren, a rent, and thinges of like sort. Common of pasture is of fower sorts, appendaunt which is belonging onely to arable ground, or to land that consisteth as well of arable grounde, as of other thinges, as a mannor or mesuage, but the appendancy doth principally grow by reason of the arable, and therefore it belongeth to such beasts onely as doe manure or marle the
p 37.H.6 34. grounde, as horses, oxen, kine, and sheepe.[p] And if a man haue common to certaine arable landes in one Village, hee cannot vse the Common with beastes that manure his
q 10.E.3.56. arrable in another village.[q] And this ought to be intended of ancient arrable ground, not of
r 10.E.2.Cōmō 22.Ass.pl.2 land newly improued.[r] For continuance of time immemoriall maketh the appendancy, wherefore if the arrable lande to which common is appendant, doe by purchase come into the possession of the owner of the soile, in which the common is to be taken, the common is extinguished

tinguished in his person: But if after the tenements bee seuered by alienation as they were before, the common is reuiued by some authority, [f] because the same ancient arable land to which before it belonged still continueth: But by some it is otherwise, because being once extinguished it cannot be *de nouo*, and in an instãt made appendant. [g]

[f] 4.E.3.4. 17.E.2. Common 23.

[g] 14.H.4.28.

Common appurtenant is where a man prescribeth to haue common of pasture belonging to his land with all manner of beasts, it differeth from a common appendant in this, that a common appendant is only to bee taken by such beasts as manure or marle the ground, and by such number of beastes as will serue to manure or marle the ground, to which the common may be claimed, and belongeth onely to them as long as they are demurrant vpon the land: But a common appurtenant may be taken by all manner of beastes. [a] Likewise a common appendant must bee only claimed by reason of land which may be marled or manured: but a common appurtenant may bee claimed by reason of a messuage or house. [b] Furthermore a common appendant groweth onely by continuance of time, and the essence of it is prescription ioined with appendancy, [c] But a common appurtenant may bee granted at this day, and springeth vp in an instant. [d] And a common appendant cannot be

[a] 37.H.6.34. 9.E.4.3.

[b] 22.H.6.43. 4.E.4.29.

[c] 26.H.8.4. 5.H.7.7. 4.H.6.13.

[d] 16.H.8.4. 15.Assiz.pl.5. Common 13.

bee seuered from the lande to which it belongeth: e But a common appurtenant may bee seuered: f And they differ in this, that a common appendant must be vsed and taken, according to the rate and quantity of ground, in regard of which it is graunted or claymed. g But a common appurtenant may be claimed for beastes sans number: for by the opinion of *Mowbray* none shall haue a Writ of Admeasuremẽt of pasture, but he that hath a common appendant: h So that it may be probably collected, that a common appurtenant because it cannot be admeasured, may be wel enough sans number: And it may bee likewise to a certain number of beastes, for if a man at this day wil grant one a mesuage with a common appurtenant for tenne beasts, I doubt not, but this is a good common appurtenant to the mesuage.

e 5.E.7.7.
f 26.H.8.4.
g 15.Ass.pl.5.
h 18.E.3.30.

Common by vicinage is where two townships or moe do entercommon, and haue entercommoned from time out of mind, which is not to bee vsed, by putting the beasts of the inhabitants of one towne, into the lands of the inhabitants of another towne, for so they may be distrained damage feasant: But they must put them in their owne fields, and if they stray into the fieldes of the other village, they must suffer them to bee there, and they must put in their beastes, hauing regarde to the freehold of the inhabitants of that village where

where the common is to be vſed. [i] This kind of common *M. Littleton* maketh appendant, [k] but by other authority it is a ſeuerall and diſtinct kind of common.

i 15.H.7.13. 15.El.316.Dy. 16.E.3.Cõm 9 22.H.6.51. 6.E.6.70.Dyer

k 7.E.426.

Common in groſſe is where a man claymeth to haue common for all maner of beaſts, whether the number be certaine or vncertain by ſpeciall grant in writing, or by preſcription in him that claimeth or his anceſtors, or they whoſe eſtate he hath, not by reaſon of any particular land: and this common may be vſe by the beaſts of a ſtranger, which the proprietary of the common may gieſt, as we terme it. [m]

m 11.H.6.per Babing.Mart. & Paſton.

A Warren is a profit likewiſe which may bee taken out of other mens ground by preſcription, [n] and if the owner of the ſoyle or any one by his commandement, or as his ſeruant doe come vpon the ſoyle, and do chaſe the Conies, he cannot iuſtifie the chaſing, [o] though he may iuſtifie his entrie into the ground. [p] And a rent is alſo a profit iſſuing out of the ſoile of a ſtranger, and ſauoureth of the nature of the land, out of which it iſſueth, [q] therefore if rent iſſue out of land in auncient demeſne, it is auncient demeſne, [r] ſo it is of rent granted out of land in Gauelkind, it ſhall bee deuided as the land it ſelfe: [s] And ſo it is of rent granted out of land deuiſable by cuſtome, though the rent bee graunted but of late time. [t] And ſo if rent bee receiuable out of cuſtomarie land,

n 30.H.6.28. Dyer

o 34.H.6.43.

p 3.H.6.12.

q 4.E.3.53. 14.H.24.

r 22.Aſſ.pl.78.

as

as boʒough English, oʒ where dower is to bee had of the halfe part, and such like, the rent shall bee of the custome and nature of the land, and therefoʒe in the demaund of such rent by Præcipe, oʒ in a Replevin, the tenure by ancient demesne of the land is a good plea, [f] And so if land in taile be diuided amongst parceners, the rent reserued to one of the coparceners shal be in taile, and of the same condition as the land was. [t]

f 14.H.8.5.

t 2.H.7.7. 15.H.7.14.

Parsonall things are things either in possession, oʒ in action: Things in possession are either goodes oʒ chattels: the name of goodes is naturall and ciuill, by the naturall signification all such things are comprehended vnder the name of goodes, which may pʒofit. [u] But as the name of goods is taken ciuilly, it stretcheth to the whole heape and body of a mans wealth, together with the charge and deductions: the reason of this difference is because nature considereth things as they are: but a common weale oʒ citie after such soʒt as is most expedient. [a] And though the charge which followeth goods doe detract somewhat from the value and estimation of the same, yet because it is to bee discharged and satisfied out of the goods, it is therefoʒe iointly reckoned and considered with the goods themselues.

u 1.49.de verb.signific.

a Alber.Gentil.lib.2.Epist. 67.

Chattels which in the Common Lawe are tearmed *Catalla*, are diuersly taken, soʒ the pʒofits

profits of land if they be giuen generally vnto the King by Act of Lawe, they may bee called Chattels, and therefore the profits and issues of the Landes and Tenements of them which flie for felony are forfeited vnto the King, vntill such time as they be acquited, and that by the Statute of Prærog. cap. 10. which sayeth that the King shall haue *omnia Catalla talium fugitiuorum*, and vnder the word *Catalla* is comprehended the corne which was growing vpon the land, at the time when the forfeiture of the goodes did beginne to take place,[b] And if a man be outlawed in an action of debt, and the outlawrie bée retourned, so that the Writte issueth to the Escheator to seise the goodes, chattels, and land of the party outlawed, the issues of the land shall bée taken to the kings vse vntill he haue sued his Chapter of pardon:[c] for an outlawed person shall not forfeit any Land, but the profits onely, as rent and corne, if hée be outlawed in a personall action: Otherwise it is if he bée outlawed of felonie, for then the king shall haue the escheate of the land, or the Annum, diem, & vastum.[d] But if the profites of land bée generally graunted by the act of the party, then they are the substance of the Land and do not passe without liuery: And if a man graunt the profits of Land, the Land it selfe passeth.[e] And therefore it hath béene helde by *Fortescue* and

b 3.E.3.Corone 3.4.

c 8.R.2.Supersedeas 19.

d 9.H.6.20.

e 14.H.8.5. 45.E.3.90. 4.El.2.10.Dyer

and *Danby* Iuſtices, that tenant in fee ſimple may graunt *veſturam terra*, and the graunte ſhall haue it after his death: But the tenaunt in tayle, for life, tenant in dower, and tenaunt by the curteſie cannot make any ſuch graunt, but if they dye the graunt is determined. [f] And if a feoffement be made of Land vpon condition that neither the feffee nor his heires ſhall take the profits, the condition is voide, and the feoffement ſimple and abſolute, [g] and in ſuch caſes the profits of land may not be termed *Catalla*, no more than the lands themſelues: But vnder the word Chattels, a leaſe for terme of yeares is comprized. [h] And likewiſe a right of action for goods: as if goods be taken wrongfully from a felon: [i] Or when one is indebted to a felon by bond: [k] Or when he is accomptable to a felon by reaſon of any receipt, or otherwiſe. [l]

f 37.H.6.30.

g 21.H.7.24.

h 39.H.6.35.

i 6.H.7.9.

k 19.H.6.47.

l 21.E.3.9. & 50.

Things in action are ſuch in which a man hath neither proprietie nor poſſeſſion: as if a man doe owe to another 11. pound vpon a writing obligatorie, though he haue a proprietie and poſſeſſion in the [m] writing or charter, yet the ſumme contained is a thing in action, in which he hath neither property nor poſſeſſion: and ſo it is of an Aduowſon when the church is voide of an incumbent: for the patron can not graunt it to any other, becauſe then he ſhould graunt but *fructum aduocationis*, which

m 1.H.7.15.

is

is a thing rather imagined by Law, than subſiſtent by nature: and therefore the patron can not truely bee ſaid to haue property or poſſeſſion in it. But though ſuch things be to ſome intent meerely in action, yet in ſome caſes they are taken as things veſted: and therefore if a man be ſeiſed of an Aduowſon, and the Church become void and he dyeth, his executors ſhall preſent and not the heire, [a] for the Aduowſon in regard of the executors was a chatel veſted in the teſtator. The king may graunt things in action, [o] and ſo may a common perſon in ſome caſes: As if a man bring an Action of Debt againſt I. N. and the plaintife is indebted to mee, and promiſeth me that if I will ayde him againſt I. N. that I ſhall bee payed out of the ſumme in demaund: there it is lawfull for mée to ayde and maintaine the plaintif againſt I. N. becauſe by the promiſe I haue intereſt in the ſumme demanded. [p] And where a man is indebted to me in 20. li. and another oweth him 20. li. by obligation, he may aſſigne this obligation and debt to me in ſatiſfaction: And I may maintaine ſuit for it in the name of the other.

a F.N.br.34.

o 2.H.7.8.

p 15.H.7.2.

A Table

A Table of certaine words in the Interpretation whereof the Common Law of this Realme and the Ciuill Law do seeme to agree.

A.

Accusatio A bill of presentment, is a regular forme of complaint, whereby offences are opened and punished.

Acquisitum purchased, that is said to be whereof the property is translated from one to another.

Affines are the kinsmen of the husband and the wife by marriage, so called, because two kindreds which are diuerse one from the other, are coupled by marryage, and one of them commeth to the borders or marches of the other kindred.

Ad nos pertinere is said that which doth belong vnto vs, either by way of property, or by way of possession, or by charge, or by administration.

Ædes, plural: a house consisting of diuerse roomes, (for domus may consist only of foundation, wall, couer) as the integrall parts, or as some briefly say, which consisteth of soyle and superficies.

Ætas

Æstas sommer, a part of the yere, which beginneth at the equinoctial of the spring, and endeth at the equinoctial of Autumn, and so sommer & winter are diuided by 6. monethes.

Annona victaile, is not referred only to corn, but to the meat of the shambles, aswell to fish as flesh.

Aperta vis, open force, which is manifest and euident, and doth not receiue any excuse of simplicity.

Arbor vento deiecta, hath not now the name of a tree, but the name of wood. Arbor dū crescit, lignum cum crescere nescit.

Area, a floare is a vacant place, therfore called Area quasi exaruerit, and were not able to bring forth any thing, it hath been taken to be such an empty place as doth lye discouered, locus ab ædificib purus, and hath no superficies: it is called a plot of ground, court or yard.

Argentum siluer, it is of three sorts, infectū, factum, signatum. Infectum is that which is vnpolished and not adorned with any particular forme being in the ore, or bullion, newly seuered and singled from the ore. Factum, is that which is beautified with some particular forme, of which kind is a siluer cuppe, a siluer goblet, a siluer bowle, or a siluer mazard. Signatum is that which beareth some special Image or impression, & such is the siluer that is coined & accompted currant, Argentum factū

must be described by the kind or shape, Infectum by the weight, Signatum by the number.

Arrestare, is by the authority or warrant of the Lawe, to hinder that either a man or his goods be at his owne liberty, vntill the law be satisfied.

Artifices, artificers, are they which sell things laboured by them, and by their labour reduced into a particular forme, as Shoomakers, Smiths, Glouers, Taylors and Weauers, but artificium if it be largely taken, extendeth to the knowledge of euery art: artifex and opifex differ, for in the one there is labour and iudgement, in the other labour only.

Assultus, an assault is a violence done to a mans person, by the person of another man.

B.

Bona fides a sincere conscience, excusing one of ill meaning.

C.

Carcer is taken two waies, for it is either locus custodiæ, or locus pœnæ.

Cauillatio, when a man turneth his speech ab euidenter veris, ad euidenter falsa.

Cella because there we do celare, we do hide that which we would kepe secret or close.

Ciuitas, a citie: it is taken materially, and formerly: being vnderstood materially it doth signifie a multitude of houses made of stone and timber, being formerly taken it is ciuilis societas quasi societas simul viuens, and not viuens simplic,

simplie, but viuens bene, for as *Cicero* saith, ciuitas sine legibus is corpus sine anima, and therefore *Aristotle* saith, non concedimus vt homo imperit sed ratio.

Cliens, is he that is in suit, so called quasi colens, & he who dealeth for him in the cause is called patronus, quasi pater.

Codicillus, ỹ declaration of a mans last will which without the iust solemnity of a testament a man ob impedimenti necessitatem is inforced to write, but now the vse of codicills or testaments are without any necessity confounded, which is contrary to law, for a codicill ought to serue necessity, and not a rash onset.

Cognacio, kindred, it is diuided into three parts, 1. into parents, 2. into children, 3. into cosins. Parents are they of whom we are begotten, as father, mother, grandfather, grandmother, and these which are in degree aboue them. Children are they which are begotten of our bodies, as sonne, daughter, grandchild, and such as be vnderneath them, Et nati natorum & qui nascentur ab illis. Cosins are they which haue neither begotten vs, nor bin begotten of vs, but haue a common roote and originall with vs, as brother, sister, vncle, aunt, and such as do discend from them.

Colludere, is in fraudem tertij conuenire.

Commenda, the custody of a Church committed and commended to some.

Commodare is to grāt the vse of some thing for a certaine time, there is difference betwixt commodare & mutuo dare, because commodare is to lend, to haue the same againe, as bookes, apparell, and such like, but mutuo dare is to trust, hoping to haue the like againe, as money, corne, salt, spices, and such like.

Compromissum, is the poiser that is giuen to the arbitratour, so called because both the parties doe promise to obey the opinion of the Iudge, & therefore he is called compromissarius Iudex to whom the matter is referred.

Communitas, a communalty, is societas hominum communi lege viuentium.

Conditio, when a thing dependeth super casum incertum which may tende either ad esse or ad non esse.

Confessio, is double: either iudicial, or extra iudicial, iudicial is that which is done before the Iudge, extraiudicial which is done in presence of good and honest men.

Consentire, is to meet on in opinion.

Constitutiones, Iudgements, rules, and awards concerning seuerall matters whereupon this verse hath bin made.

Quatuor ex verbis virtutem colligit legis
Permittit, punit, imperat, atque vetat.

Controuersum ius, is that which is on both sides doubtful: certum ius is that which is certainely determined and is called positiue Law.

Copu-

Copulatiua the coniunction copulatiue is taken after two sorts, either in a deuided sence, or in a compounded sence, in a diuided sence, as when I say, Sir Robert Brooke, and Sir James Dyer were Lord chiefe Justices of the Cōmon pleas, for they were not chiefe Justices together, but at diuerse times: in a compounded sence, as when I say two & three do make fiue.

D.

Debitor, is he of whom we may against his will exact money.

Decimæ are of three sorts prædiales, personales, and mixtæ prædiales are they which arise of farms or lands, as corn, hay, and the fruits of trees: personal which are due by personall labor, as by some trade, trafficke, or mystery, mixt of which it may be doubted whether they be predial or personal as wooll, lambe, milk, &c.

Defensio, is the auoiding of a furnised & pretended offence.

Delegatus a delegate, to whom a cause is cōmitted to be determined and ordered.

De plano, vel sine figura iudicij, vel summarie.

Deprehendere, is to take a man in ipso facto, so that he can neuer flie, nor denie the fact.

Discendere to discende or to spring of ones body, hereupon they which are borne of vs are

called by the name of discendents, which with them that ascend make the right line, and the ascendents and discendents cannot marry together, wherefore if Adam were now living he could not marry a wife.

Diœcesis, the governement of a certaine province by the Bishop, for as a territorie is so called, quatenus Iudex ius terrendi habet, so a diocese as far as a Bishop hath ius administrandi sacra.

Dispensatio, a release of common right, either ex causa vtilitatis, necessitatis, or ingentis prærogatiuæ meritorum.

Diuersa, such things whose subiect is not alike, or whose diffinition is not alike.

Dominium is a right to dispose perfitly de re corporali.

Domus instructa, a house furnished, if a man deuise such a house the houshold stuffe passeth, but not the wine that is within the house, because by common intendement a house is not furnished by wine.

Dubia causa, is that which is but semiplene probata.

E.

Error, an opinion, whereby that is approued and allowed to be true which is false, and that to be false which is true, and error may be two wayes, either in iure constituto, or ela

in

in iure quod quis in ſuo habet negotio, the one is an error in law, the other in facto.

Euaneſcit actio, the action doth faile, or abate, euaneſcit actio, by the power of the law, or of the Iudges, remittitur actio, by the will of the plaintife.

Executor, an executor, which is after three ſorts, executor teſtamentarius, executor legalis, that is to ſay the ordinary, executor datiuꝰ, the adminiſtrator.

Election, is the certainty of our will, it may be of perſons, or of things, places, or times: Of things, as if a man ſhould pay a ſumme of monye, or els a horſe or a hauke: Or of perſons, as if he ſhould pay it to I. S. or to I. N. Or of places, as if he ſhould pay it at London, or at Lincolne. Or of the time, as the firſt day of Aprill, or the ſecond day of May.

F.

Falſitas, falſhood is immutatio veritatis cum dolo & damno alterius, the chaunge of trueth with falſhood to the peruerting & endamaging of another man.

Fama, is a common report proceeding from ſuſpition, and publiſhed by the voices of men, and it differeth from rumor, becauſe that is a diuerſe whiſpering of men, which is not ſo effectuall as Fame. Fama conſtans is that which is diſperſed abroade neyther by men

vnknowne, nor of light credit, nec ignotis nec improbis.

Fideiussor is hee which bindeth himselfe for another, quasi iussu alterius ponens fidem suam.

Fortuitus casus, a meare chaunce which by mans counsaile, care, and diligence can neyther prouideri or præcaueri, bee fore-seene or foreclosed.

G.

Generalis lex, a generall law which comprehendeth all cases, except such as be vnlawfull, and vniust. For there is nothing more absurde then to draw a iust Lawe to an vniust interpretation.

Germani fratres are they which are of the same Father & Mother, Consanguinei which haue the same Father, but not the same Mother, Vterini which haue the same mother, but not the same Father.

Gestores negotionũ, factors or procurators be of three sorts, voluntarij which gratis and of their owne accord do regard the busines of their friend: Necessarij which by obligation of their office doe follow matters: Quasi necessarij, which haue some colour to deale in matters.

Græca mercari fide, i. pecunia numerata with money paid in hand.

Ille-

I

Illegitimi bastards, whereof there be three sorts, Incestuosi which bee begotten of kinsmen and kinswomen within the degrees prohibited: Nefarij, which are begotten of descendents, the children of the same parent: Spurij, or Adulterini, which are borne in adultrie.

Iniuria whatsoeuer is done against law and right, whether by words, or by slander: or by deed, as by violence of hand.

Inops sine ope without helpe, which hath no wealth or maintenance, whereby he may helpe himselfe.

Instauratio, is to bring a thing into his former estate.

Insula, a plot of ground compassed on all sides with the sea, quasi in salo posita, it is of two sorts: Perpetua, and Natiua. Perpetua, which hath bin from time out of mind part of a Prouince: Natiua, which hath bin lately discouered by the ebbe and drought of waters.

Interlocutoria sententia, which doth not define or determine the controuersie, for that is called sententia definitiua: an Award.

Iudex limitaneus, which hath a limited iurisdiction, as the Lord in Court Baron who onely holdeth plea of a summe vnder xl. shillinges, and within the precinct of his Mannour.

Iura-

Iuramentum an oath, it is the affirming or denying of a thing with religious affection, or attestation, and it is double: Extraiudiciall or Iudicial. Extraiudicial, as Iuramentum conuencionale, when vpon a bargain one doth sweare to another. Iudicial is of two sorts, Necessariũ, & Suppletiuum: Necessarium, which is ad litẽ æstimandam, when witnesses are produced by the parties. Suppletiuum, when the Iudge doth inforce the party himselfe to sweare for want of other proofes.

Inseperabile, that is said to bee which is so inherent in the subiect, that it cannot be removed, but they doe either stand together or fall together. A thing may be said to be individuall or inseperable in many respects, 1. according to the forme required in the act: And therefore if they be bound iointly, they must be sued iointly, 2. by reason of necessary depending, & therefore the principal being defeated, the accessory is also destroyed, because it cleaueth inseperably vnto the principal: and therefore if the mariage be not lawfull, the indowment cannot be lawfull, 3. by the meaning of the parties: as when a submission is made to two arbitrators it is not to be imagined that the parties had an intent of seuerance, 4. by the nature of ỹ thing: as when a thing will not suffer a partition: as a seigniory in grosse, a common, a condition, and so a iurisdiction is an entire thing: and

therefore

therfore if a man will bring an action in a base Court of a debt of 4.li. it is not good for xxx.s. or a lesse summe: for a Judge or officer hath a precise power of the law, and if he passe his iurisdiction, his sentence or act is void.

Integrum is that which is compounded of diuerse partes, for partes compacted and ioined together doe make the whole, but an entire thing may be diuerslie: for it may be eyther totum numerale consisting of many numbers linked together, 2. totum vniuersale, as the general nature whereof the particulars are apprehended: as homo of animal, animi of brutum, 3. totum integrale which is made whole and intire by many parts, and it is of two sorts, Heterogeneum, and Homogeneum: Heterogeneum the parts whereof are not of the nature of the whole thing, as a house which doth consist of soyle, stone, wood, morter, and coner. Homogeneum which is of the same nature with the whole, as water, fier, earth, whereof euery part hath the name of the whole.

L.

Lacus is that which hath perpetuam aquã. Stagnum that which hath water at sometime, and is sometime drie. Fossa a receptacle for water made by mans hand.

Lana, woolle, which may be cloath, but yet is not wrought in cloath. And if a man by

by his will do deuise his woll to any, bee it wrought or not wrought, dyed or not dyed, or be it spunne, it is comprised vnder the name of woll, and it is called by the name of Wooll vntill it be made cloth.

Litus, that place to which the greatest flow of the sea doth come.

M.

Maiestas, a soueraigne honour: Maiestie is said to be the daughter of honour & reuerence.

Marinum & Maritimum do this differ, Marinum is that quod Mare incolit, which lyeth in the sea, or which is bred in the sea, Maritimum quod Mare accolit, which is abiaining, or adiacent vnto the sea.

Mercator, a Merchant, is not as some think tearmed a Merce, but of the word Mercor, which signifieth to buy, and they are properly tearmed Mercatores, qui res emunt quas in eadem postea carius vendant.

Moneta, a money, or Money, so tearmed because by the impression of the stampe it doth giue vs notice, either of the prince whose it is, or the price which it beareth: It taketh Legem valoris, the rule of the value of the superior, and therefore it cannot be abased or refused, but by the commandement of the superior.

Morosus, that is said to be by which a man is not sicher.

Motu

Motu proprio, ex certa scientia, de plenitudine potestatis, are prægnantes clausulæ, clauses of importance, against which none may be heard.

Mutuum, quasi ex meo tuum.

N.

Narratio, a declaration of a matter either ore tenus, or in forme of Law: If it be ore tenus, it is called a motion, and therefore it is said, qui bene narrat, bene impetrat: If it be in form of Lawe, it is a declaration grounded upon a writ, containing the whole state of the matter, as the plaintife supposeth it.

Naturaliter possidere he is said, which possesseth a thing corporally, & taketh the profits of the thing possessed, and this of the common Lawyers is called possessio in facto: As if a mans father die seised, & the sonne doth not enter, nor actually take the profits, neither doth any other disturbe him to take possession, this is called a possession in law, or civile possessio.

Negotium meum, that is said to be, cuius lucrum & damnum ad me pertinet.

O

Obuentio is a kind of revenewe: it differeth from Reditus, being strictly taken, in this, that obuentiones are contingentiu, reditus certorum.

Oculis res subijci dicitur when it is plaine & manifest, it is well said of *Erasmus*, ad cognitionem magis faciunt aures, ad fidem faciendam

dam certiores sint oculi.

Officialis, an Official who in a certaine part of the diocese is the Bishops deputy.

Opera labour, it is double, Officialis, and Artificialis: Officialis, is that which is spent & bestowed vpon the diligent attendance done by the seruant to the Master. Artificialis, is the labour of the trade, as Painting, Pauing, seeling, graueing, embroidering, & such like.

P.

Pactum is the consent of two or more in a matter which pleaseth both parties. Pollicitatio is when there is not the consent of two, but onely one agreeth. Pactio nuptialis is a Matrimonial contract. Pactum retrouendendi is when the vendee couenanteth, that if the vendor or his heires or executors will within a certain time pay so much mony, as the vendee doth pay, that then he shal haue the land again and be in his former estate.

Palã factũ is that which is done openly. Publicè factũ is that which is done coram populo.

Paries, a wall, therefore there be diuerse kinds: Latericius which is made of clay, Testaceus which is made of bricke, Cœmentarius which is made of lime, stone, and water mingled together, Craticius which is made of wood, boards, or boughes platted together.

Parœcos, a parishioner, an inhabitant in a certaine place, who hath brought his houshold

to

to a certaine place, to reside there.

Prætor maior, the Maior of a city, as *Rhodigi-nus* saith: for others are called Prætores minores.

Priuilegium is ius singulare, whereby a priuate man, or a particular Corporation is exempted from the rigor of common Law, for that which is now called proprium, hath been called of old writers priuum.

Proprium that which doth so belong to one that it is not cõmon to another, & though that wherein we haue a ioint property with others may be called nostrum: yet it cannot be called propriũ, for propriũ doth not admit any communion, but proprium & suum be equipollent, and of the same sence.

Puer hath three significations, either it signifieth the estate of a man: as when we call seruants pueros: Secondly the sexe, as when we call a male childe puerum: Or elis the age, as when we call one that is young puerum.

Pars is that whereby the whole is supported, it is either pars diuisa, or pars indiuisa, this diuision will hold both in nature & Law: In nature that in a divided part, which consisteth of diuerse parcels: as the wing of a bird, or the cloven hoofe of a beast, or the finne of a fish are said to be parts diuided: In law there is also a divided part, as the third part whereof a womã is indowed after ỹ death of her husband, & after the assignment made, and the third part of the land

land of the tenant in Capite, which the king hath after his death: Likewise the partes of a manor diuided by parceners: A part undiuided is manifest to the vnderstanding & to the eye: to the vnderstanding, as the moity or third part of iointenants, parceners, tenants in cõmon, before partition: to the eye, as the vnclouen howse of a beaste, or the partes of the earth cleauing continuatly together.

R.

Ripa, a banke, it is proper to a floude, as the shoare is to the sea. Ripa is that which doth flumen continere, stay the naturall force of his course, and that is said to be a banke, quæ plenissimum flumen continet, which stayeth the water, when it is at the highest.

S.

Sequestratio is either a seperation, by way of compounding, or by interdiction of possession: It is voluntaria, & necessaria, Voluntaria, when it is done by the consent of the parties, Necessaria, when it is done by one that hath a competent authority to sequester.

Sylua cædua, which being cut may growe againe.

T

Tugurium, quasi tegurium, it is taken of some for euery countrie howse, but not rightly, for

for the house which doth consist of walles and tiles or bricke is no cotage, but a cotage is that which doth principally consist of reedes or thatch or sodes, earth and twigs layd together, and compacted by clay or slime, or which hath in it a very small deale of timber.

Tumultus is taken for euery perilous commotion, if it be publikely and hastily done.

Turba, a multitude, consisting at the least of the number of tenne.

V.

Vacillans testis, which doth giue an inconstant and diuerse testimony.

Vagabundus, which hath neither certaine house, nor stedfast habitation, a man, as one tearmeth him, *sine re, sine spe, sine fide, sine sede.*

Vel, a particle, it doth not alwaies disioine, but sometimes explane.

Vis force or violence: it is of diuers sorts, *vis detractiua*, when a man taketh a thing from one against his will: *vis compulsiua*, when I compell a man to assent to a certaine act, *vis diuina*, commonly called *vis maior*, whereof there is no resistance: *vis expulsiua*, which is done with weapon, and it is called of some *vis armata*, *vis inquietatiua*, when I

am diſſeiſed by force, *vis imminens* the ſtriking or aſſault of a man. *Vis* is not *verbis*, but *facto*, for he is not ſaid *vim pati*, which is onely touched by words.

Vniuerſale quod ad vniuerſos pertinet.

What methode is to bee vſed in handling and diſpoſing *matters of Law.*

The ninth Chapter.

Of methode it were better to write nothing then little, for ſo many diuerſe methodes are propoſed by many diuers authors, that plenty breedeth ſcarcity, and a man can hardly tell which to chooſe. Curioſity as in all other things it is vaine, ſo in methode it is neceſſary. For to proceede without equalitie of tenor is negligence, and to obſerue methode vnartificially is ignorance. They that giue a reaſon of the beginning, continuance, and ending of their tractats and diſcourſes, are without doubt the moſt iudiciall and moſt plauſible methodiſtes: or they which ſo temper and moderate the courſe of matters, that though they

they render not a precise reason of their doe-
ings: yet it is apparant to the reason and vn-
derstanding of others. A twofolde methode is
very much talked of, & that is by procéding ei-
ther *a singularibus ad vniuersalia* or *ab vniuersa-*
libus ad singularia, the one of these I accōpt no
methode at all, howsoeuer it hath vsurped the
name, being but a natural discerning of things
done in *facto* by the ordinary direction of ỳ sen-
ses, & making thereof a generall conclusion, wch
is easie & familiar to euery mans capacitie so
that ỳ praise of ỳ action is diligence & not art,
for is it any difficult thing to reason & cōclude,
wood is heauie, stōe is heauie, iron is heauie, *et*
sic in cæteris: therefore all things made of earth
are heauie: how prone & readie is ỳ perceiuing
of these particulars to euery mans sense? and
how easily may the cōclusion be framed by his
vnderstanding? but in déede ỳ discoursing frō
vniuersalles to particulars is more hard, more
artificiall, more cōpēdious, for it is dōe in lesse
compasse & fewer wordes, which is a great ar-
gument of a good methode, & therefore I doe
not agrée to *Aristotle* ỳ Athenian doctor, whē he
saieth, *Ars tum existit, cū ex multis experītia no-*
tionibus vna quæ ad vniuersū genus accōmodetur
nascitur præceptio. [a] Vnles he meane it of vulgar and mechanicall trades & occupatiōs, whereof onely I admit it to be true, but I rather ap-
proue that which he saieth, and doth likewise:

[a] Metaphys. l. c. 1.

progrediendũ est ab vniuersalibus ad singularia. [b] But there be some which will not allow any discourse but that wͤ is furnished with mathematicall & demõstratiue reasons. Some would haue euery thing hãdled by exãples, as *Ramus* a man happier in writing, then in reprouing one ẏ writ better then hee: who in handling Logical places doth illustrate thẽ with mãy examples, but withneuer a rule. What maner of teaching is this, to shew vnto thee that others did thus: but not to shew why they did so: wͤ default is for want of rules, in which ẏ reason and knowledge of doing things aright is conteyned. A man cãnot mak a shoe by a number of lastes, but hee must haue instruction of one that is skilfull in ẏ trade. Some againe will haue euery thing confirmed by ẏ authorities & testimonies of them ẏ be learned, thinkeing that onely to be the fit way of teaching. But the certaine & necessarie reasons of the mathematikes, are not in all artes to be required. [c] Neither is there an ἀκρίβεια or accurate kinde of handling things in all sciences alike to be vsed and obserued: but in euery science things are so to be ordred & digested, as ẏ subiect or matter doth require where about it is employed, and so farre forth as may be agreeable to ẏ profession of the science. For a Geometrican and a Carpenter doe diuersly handle and vse a right line, ẏ one, as it may be profitable to his work which

b. Phisicor. 1. c. 1.

c. Arist. Metaphys. 1. part poster. c. 3.

which he craueth, the other searcheth what kinde of thing it is, and of what nature and so other sciences must be ruled by ỹ subiect which they contẽplate, least there be more [illegible] then in them: neither is a cause or reason to be erected in all things, for of many it is sufficient to haue this knowledge *quod ita sunt*, though we cãnot know *propter quod ita sunt*, as of prin-ciples wch are the first and highest rules in artes and sciẽces, & therefore no reasõ can be yelded because they are *prima*, the very first in the dis-course of reasõ, and therefore [illegible] for them-selues to be beleeued. Surely method is so con-uenient a thing in the studie of the law, that without it neither can the vnderstanding be well taught, nor the memorie well directed. It is not enough to haue a great heape of things that are to be reade, vnlesse the vse or order and manner of reading them be well vnderstoode: and as in things ỹ be fit for banquets, though there be great varietie of swẽte meats, yet there is nothing more vnpleasant or vnholsõe if they be mingled together, so ỹ Studẽt must haue a care least the order of his reading be cõfounded, least the last things be handled in the first place, and these things which should be in the middest be put in the last place, wch whoso-euer doe, they cannot onely not comprehende the things which they study, but vtterly de-bilitate and weaken the strẽgth of ỹ memorie:

therefore it is good for Students to vse an artificiall *Analysis*, or resolution of thinges, into their principles, which may teach to deuide the whole into his partes, and to subdeuide partes into parcelles, and in the end to make a cõsent and coherence of the entire thing & his parts: for though the skilfull partition of things be profitable and pleasãt for the memory, yet the *Synthesis*, that is the apt cõposition, coordinatiõ, and mutuall dependance of them doth more satisfie the vnderstanding. [d] Therfore *Polybius*, a iudicious author saith well, that they which thinke by the knowledge of particulars dispersed to attain to ỳ full and perfit knowledge of the entire thing, do no lesse erre, then he who viewing the partes of a handsome and comely body seuerally and apart, doth therefore imagin that hee knoweth the whole feature & protraicture of the same man, who if hée had beheld these parts ioyned together, & compacted, and moued by ỳ spirit of life, would haue iudged farre otherwise. For though a mã may haue a confused notion, or conceite of the whole, by viewing the seperate & disioyned partes, yet it is not possible ỳ he should haue certaine knowledge of ỳ same, no more then a man by séeing particular Mappes of Cities, may certainely perceiue the figure, situatiõ, & order of ỳ whole world. But he that can easily resolue thinges, may easily compound: for when hee knoweth the

d. Polyb. li. 1. histor.

the particular sense and vse of the things resol-ued, he may easily gather a generall knowledg of the whole thing, that is, a generall knowledge of many particulars, which make one entire thing. The forme of this *Analysis* following, which is of Maister *Littleton* his two Chapiters of fee simple, and fee taile, I doe offer to the Student, as a thing to be considered of, because it is incident to this purpose, which though it gaine not his good liking, yet if it minister but occasiō vnto him to aduenture vpon the conueyance of some other *Analysis*, that may receiue the generall approbation, and iust applause of the learned, I shall thinke my labour herein well bestowed, and woulde gladye reape profit by other mens presidents.

The Analysis of Littletons *Chapiter of Fee simple.*

- Tenure in fee simple may bee considered.
  - By the definition.
    - Inuented.
      - Fee simple is as much to say, as a lawfull and pure inheritance.
    - Expounded.
      - He that will purchase landes in fee simple must haue these wordes in his purchase (To haue and to hold to him and to his heires, for these words his heires make the estate of inheritance, and he that lacketh this word (heires) and hath to haue and to hold to him and to his assignes for euer, hath estate but for terme of life.
  - By the tenant in fee simple who is after two sorts to be considered.
    - Generally.
      - Tenant in fee simple, is he which hath lands or tenements to hold to him and to his heirs for euer.
    - Perticularly.
      - By purchase, as when a man hath lands and tenements by his deed, or by his agreement to the possession of which he commeth not, by title of discent from none of his ancestors, or his cosins, but by his owne act.
      - By discent who may be thus described.
        - He that is tenant in fee simple must be of the whole bloud who may bee proued by two examples.
          - 1 If a man haue issue two Sonns by two venters, and the elder purchaseth lands in fee simple, and dyeth without issue, the younger brother shall not haue the land, but the vncle of the elder brother, or some other his nye cosins shal haue it, for that the younger is but of the halfe bloud to the elder brother.
          - 2 If a man haue a Sonne and daughter by one venter, and a Sonne by another venter, and the sonne by the first venter, purchaseth lands in fee simple, and dyeth without issue, the sister shal haue the land by discent as heire vnto her brother, for that the sister is of the whole bloud to the elder brother.
  - 1 Inheritance in fee simple may lineally discend but not lineally ascende which may be illustrated by sixe prerogatiues.
    - 1 By the vncles prerogatiue.
      - If the fathers sonne purchase land in fee simple, the vncle shall haue the land as heire vnto the sonne, and not the father, because it cannot lineally ascende.
    - 2 By the fathers prerogatiue which is threefold.
      - 1 If the foresaid vncle dye without issue, the father liuing, the father shal haue the land as heire vnto the vncle, & not vnto the sonne, for that he commeth to the land by collatterall discent, and not by lineall ascention.
      - 2 If lands discend by the fathers side, the fathers side shall inherite, and none of the mothers side.
      - 3 If the sonne dye without issue, and haue purchased lands in fee simple they of the bloud of the fathers side shalbe heire vnto him before any of the mothers side.

By the properties of fee simple.

2 Of such things whereof a man may haue a manuall occupation, poſſeſſion or receite as of lands, tenements, rents, or ſuch other, a man ſhall ſay in his pleading & in way of barre, that one ſuch was ſeiſed in his demeſn as of fee, but of ſuch things that lye not in manuall occupation, as of an aduowſon of a church, or ſuch maner of things there he ſhal ſay, that he was ſeiſed as of fee and not in his demeſne as of fee.

3 Fee ſimple is the largeſt & greateſt inheritance that a man can haue.

4 For default of lawful heires the lord ſhal haue the land held in fee ſimple by eſcheat.

3 By the mothers prerogatiue which is twofold.

1 If the ſonne hauing purchaſed landes in fee ſimple haue no heires on the fathers ſide, then ſhall the land deſcend vnto the heire on the mothers ſide.

2 If a man take a wife inheritrix in fee ſimple, which hath iſſue a ſonne and then dyeth, and the ſonne entreth into the tenements as ſonne and heire to his mother, and after dyeth without iſſue, the heires of the mothers ſide ought to inherite the tenements, and not the heires of the fathers ſide.

4 By the brothers prerogatiue whiih is after two ſorts.

1 If there be three brethren, and the middle or yonger brother purchaſe land and dye without iſſue, the elder brother ſhall haue the land by diſcent, for that he is more worthie of bloud.

2 If there bee two brethren by diuers venters, and the elder is ſeiſed in fee ſimple and dyeth without iſſue and his vncle entreth as heire vnto him which alſo dyeth without iſſue the younger ſonne ſhall inherite the tenements as heire to the vncle, becauſe hee is of the whole bloud to his vncle.

5 By the ſiſters prerogatiue.

If a man be ſeiſed of land in fee ſimple, which hath iſſue a ſonne and a daughter by one venter, and a ſonne by another venter, and dyeth: and the elder ſonne entreth, and dyeth without iſſue, the daughter ſhall haue the land, and not the younger ſonne, but if the elder brother dye before entry bee made, then the younger brother ſhall haue the land. *Nota poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem.*

6 By the prerogatiue of the whole kindred.

If a man purchaſe land in fee ſimple and die without iſſue, euery one that is his next coſin collateral for default of iſſue may inherite.

Obſeruations vpon the *Analyſis*.

A. THis definition, which Maſter *Littleton* vſeth, ſoundeth like a good Logicall definition, as conſiſting of the true *genus*, and the proper difference: for this word (Inheritance) is the *genus*, which extendeth as well to fée ſimple as to fée taile, and this word (pure) is a difference, whereby it is diſtinguiſhed from fée taile: for fée ſimple is a pure inheritance, that is without limitation or reſtraint, but fée taile is a limitted or a reſtrained inheritance. This word (lawful) in the diſinition is not idle but the meaning of it is, that it is an inheritãce according to the meaning of Common law, for if by (lawful) ſhould be meant rightful, then a fée ſimple by diſſeiſin ſhould be excluded, which I thinke was not M. *Littletons* intent. And againe, if this word (lawful) ſhould extend to all Lawes, inheritance ſhould be here taken according to the interpretation of other Lawes alſo, which cannot be. Maſter *Littleton* well beginneth with the definition, for there are but foure things to be doubted of, firſt, whether a thing

be

be *in rerum natura*, ſecondly, what it is, and of what nature, thirdly, whether it be ſuch and ſo qualified or no, fourthly, why it is ſuch, and ſo qualified: and he that well openeth theſe foure points, ſhal in all learned diſcourſes ſhew himſelfe excellent and abſolute.

The nature of fée ſimple may bee ſomewhat vnderſtood by applying it to ỹ ſubiect to which it appertaineth, for tenant in fée ſimple, and tenure in fée ſimple, being *coniugata*, hee that well knoweth the one, muſt of neceſſity well vnderſtand the other. B.

Maſter *Littleton* laſtly deſcribeth eſtate in fée ſimple by certaine adiuncts or properties which do greatly ſerue to illuſtrate and explain the things whereof we intreat: they are of two ſorts, externall and internal. Internall are they which flow from the nature of the thing it ſelf: of ſuch ſort are the firſt and third properties mentioned in the *Analyſis*, for in that fée ſimple may lineally diſcend, and not lineally aſcend, the nature of the tenure is the only cauſe, for it being to a man and to his heires, the more worthy heire is he that is of the body, the leſſe worthy hee that is of the blood and not of the body, but the father in regard of the ſonne can be neither of theſe but in regard and by mediation of the vncle he may be heire to the ſonne, becauſe he is of the vncles blood, ſo that in the C.

direct

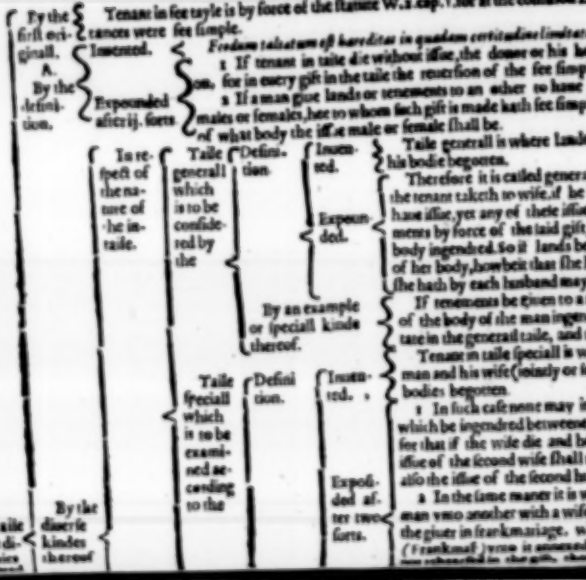
direct line it is euident, that the fée ſimple cannot aſcend: and if is a very eſſentiall property to fée ſimple to be the largeſt and greateſt inheritance, becauſe it is to a man & his heirs without limitation. Externall properties are theſe, which do ſo go before a thing, or ſo follow it, or ſo cleaue to it, that notwithſtãding there is no neceſſity of any of theſe: as for example, before the killing of a man, commonly there is ſome brawling and contention of words. With the act doth concur the ſighing or groaning of him that is ſlaine, & the flight, feare, lurking, trembling, and vnconſtant anſwere of him that did kill him do follow the acte, howbeit ſome bée ſlain, without the concurrence of theſe circumſtances. There be two ſorts of adiuncts, ſome belonging to the perſon, ſome to the thing it ſelfe, to the perſon as the kinred, country, ſere, age, education, the habit of the body, & fortune, the eſtate, the qualities of his mind, the maner of his life. The adiuncts of the thing are the cauſes, the place, the time, the maner of doing a thing, and ſuch like. Of theſe, ſome be common, and ſome be proper: common, as if one ſhould commend *Achilles*, becauſe hee was of good birth, becauſe he was a great captaine, becauſe he was in fight againſt the *Troians*, for euery of which, *Diomedes* is as much to bée commended as *Achilles*. Proper adiuncts be, as

if

if thou ſhouldeſt cõmend *Achilles* for his great valor in killing *Hector* the ſtouteſt of the *Troians*, and for his good fortune in killing *Cygnus*, who being inuulnerable, did barre all the Grecians from comming downe the wall, and becauſe being young, and not bound by any oathe or legeance, he fought ſo valiantly for the Grecians. Theſe two latter of the proper adiuncts, I call erterall, as not flowing from the eſſence of a thing, but befalling erternally to it when it is in *eſſe*. Of this kind there are two in the *Analyſis*, the ſecond and fourth.

The

The Analysis of Littletons *Chapiter of Fee taile.*



their lands or tenements to them and to their heires be [illegible] them two ingendred, & this is called speciall taile, because the issue of the second wife may not inherit, & the woman donee in frankmar must be of kin to the donor, and they shall do no seruice but tea'ty, till the degree to be accompted from the donor be past.

Diuerse kindes thereof.

1 If lands be giuen to the husband and to the wife, and to the heires of the husband which he begetteth of the body of the wife, in this case the husband hath estate in speciall taile, and the wife but for terme of life.

2 If the gift be made to the husband and to the wife, and to the heires of the wife of her body by the husband ingendred, the wife hath estate in special tayle, and the husband but for terme of life.

3 If lands be giuen to the husband and the wife, and to the heires which the husband hath by his wife in this case, both haue estate in taile speciall, for that this word (heires) is not limited more to the one then to the other.

4 If lands be giuen to a man & his heirs w̃ hee ingendreth on the body of his wife in this case ẏ husband hath estate in the tail special, & ẏ wife nothing at all.

In respect of the persons to whom the taile belongeth.

Taile to the heire male which is two fold.

1 If lands be giuen to a man and his heires males of his body ingendred, in such case his heire male shall inherite, but his issue female shall neuer inherite.

2 If lands be giuen to a man and to his heirs males of his body ingendred, & he hath issue two sonnes & deceaseth, and the elder sonne entreth as heire male, and hath issue a daughter and deceaseth, his brother shall haue the land and not the daughter, for that the brother is heire male.

Taile to the heire female w̃ is to bee cõsidered by ẏ definition.

Taile to the heire female, is where lands be giuen to a man and to his heires females of his body ingendred, in this case his issue female shall inherite by force and forme of the said gift, and not the issue male, for that in such cases where the gift is, who ought to inherite, and who not, the will of the donor shall be obserued.

By the properties.

1 Whosoeuer shall inherite by force of a gift in the tayle made vnto the heirs males it behoueth him to conuey his discent by the males w̃ may be illustrated by ij. examples

1 If lands be giuen to a man and to his heires males of his body ingendred, and he hath issue a daughter, who hath issue a sonne, and deceaseth in this case the sonne of the daughter shall not inherite by force of the taile, but in such case the donour shall enter.

2 If lands be giuen to a man and his wife, and to the heires males of their two bodies begotten, and they haue issue after the like sort, the like shall happen.

2 The death of a man taketh not away the estate of those that be in the taile, as if a man haue issue a sonne & deceaseth, and land is giuen to the sonne, and to the heires of the body of his father ingendred, this is a good taile, and yet the father was dead at the time of the gift.

3 The donees and their issue shall hold of the donor and his heires as he holdeth of the Lord Paramount.

Obſeruations vpon the *Analyſis.*

THis definition which Maſter *Littleton* maketh of eſtate taile, conſiſteth likewiſe of *genus*, and of a difference. The *genus* is *hereditas*, which is common both to it and to fée ſimple: the difference *in quadam certitudine limitata*, by which it is diſtinguiſhed frõ fée ſimple, for that is *non limitata & ſine certitudine*, and by this diffinition a man may know what a fée ſimple is, and by the definition of fée ſimple what fée taile is, ſo that the rules of art are well obſerued, which are that *Rectum eſt index ſui obliqui*, and *oppoſita in vna ſe poſita magis illuceſcunt.*

Though the diuiſion or tenure of eſtate taile both in the Table precedent conſiſt of two members, or two differences, yet the eſpecial taile is deuided into more parts: and that manner of deuiding is not contrary to the rules of methode, for it is too much curioſitie to exact in euery diuiſion two onely oppoſed eſſentiall differences, and two diſtinct kindes.

There

There bee three cauſes wherefore a diuiſion cannot be made by two differences. Firſt becauſe of noe kind of thing, both the eſſentiall differences cannot certainely be knowne, but the one of them wee doe expreſſe by a negatiue. Secondly, becauſe that difference which wee ſet downe in the affirmatiue is not alway the true difference. Thirdly, becauſe the diuerſe nature of diuerſe immediate kindes of one thing will not alwaies permit a twofold diuiſion, for though the diuiſion of *Animal in hominem & brutum* bee *bimembris* and according to rigorous exaction, yet ſith there bee many kinds of brutiſh creatures, ſome that ſwimme, ſome that flye, ſome that goe, ſome that crepe, and the particulars of theſe kindes doe differ in the quintiſſence of their nature, ſurely to comprehend all theſe diſtinct thinges vnder two differences is not to bee required, becauſe it is either impoſſible, or a thing of exceeding difficulty. But when things are to bee handled by way of diſputation, as the arguing of caſes which is of great vſe in the Law, another methode and courſe muſt bee vſed then hath beene taken in the framing of this Analyſis, for there the principall caſe muſt bee fully ſet downe, the points of Law orderly diſtinguiſhed, the reaſons on the one part muſt bee firſt ſet downe, with anſweres annexed vnto them, then the reaſons

on the other part, with anſweres likewiſe in their due places: and laſtly, the concluſion of the whole controuerſie debated, whether it were by iudgement, adiournment, or by the cõſent of the parties, or by other ſpeciall meane, and for better direction herein (I am deſirous to profit others if I could) I haue ſet downe an homely paterne according to the plaines of my conceit, in the diſpoſing and ordering of a caſe, famous in our yere bookes, and of great weight and vſe, being the Prior of Merrons caſe, being very often at large argued, namely in the 18. 19. 20. and 21. yeares of the raigne of King E. 4. at ſeuerall times, and was likewiſe touched the ſecond yeare of R. 3. and all the contents of the arguments vpon this caſe deliuered, as many as did concerne the principal points then in queſtion (for by-matters are to be repoſed in a ſeuerall place by themſelues) I haue brought into the compaſſe of a few lines, if you reſpect the large leaues wherein they are handled.

Le

Le case inter le Prior de Merton plaintife, & le Prior de Bingham defendant.

EN le 3. an de H. le 3. vn fine fuit leuy parenter le Pryor de Merton pl. & le Pryor de Bingham deforceant sur vn brief de couenaunt, que fuit in ceux parols: cest le finall concord parenter le Pryor de Merton querentem & le Pryor de Bingham deforceantem de 5. Markes, & 5. s. rent cum pertinentijs in S. & R. sur que vn briefe de couenant fuit sumon enter eux que fuyt que lauantdit Prior de Bingham acknowledge & graunt pur luy & ses successors que touts iours apres ils payer chescun an al esglise de Merton pur les tenements queux il tient del dit prior & pur les tenements queux W. de W. ascun foits tient del dyt Pryor in les villages auantdits cinque markes, & v. s. a deux termes dans, pur touts suites & seruices, & que il ferroit a le chiefe seignior del fee pur lauantdit Prior de Merton & ses successors touts seruices queux appertei-nont a les dits tenements: & pur cest grant le dit Pryor de M. grant pur luy, & ses successors, que ils voilent garrant' al auantdit Prior de Bingham & ses successors touts lauantdits tenements pur les auantdits seruices contra

Scire fac. 18. E. 4. 22. 19. E. 4. 2. 47. 20. E. 4. 16. 21. E. 4. 60. 2. R. 3. 5.

omnes gentes: sur que vient in le court vn I. Prior de Merton et pria scire fac. enuers W. Prior de Bingham dauer execution darrerages del dit rent, que fuerõt due in les ans darrein passe, & il auoit: & fuit returne &c. a quel iour le Prior de Bingham viẽt eins, et dit que le fine proue le rent grant a le predecessors del pl. destre vn rent seruice ou ascun auter rent issuant hors de terre & nemy vn annuity, per que entant que il auoit acknowledge, que cest rent fuit execute, il doit auer vn Assise ou Distres, et nemy vn briefe que est in nature de briefe dannuity, et sur cest ils demurrant.

Les questions del ley.

1. *Si le fine fuit bien leuy.*
2. *Si le rent soit vn annuity.*

1. *Negat.* { *Que le fine ne fuit bien leuie.*

Littleton.

A Ratio prima. Fines ne sont bone esteant leuies de choses quer ne sont in rerum natura al temps del fine leuy, & le rent de que cest fine fuit leuy ne fuit in esse al temps per que &c.

Brian.

Brian.

Ceo ne boſoigne. Car ſi ieo auoy in Iſlingt5 20.li. rent iſſuant de terres de twenty homes per ſeuerall grants, ſi ieo grant per fine a vous 20.li. rent hors de lour terres ou tenements in Iſlington vous naueres 20.li. rent queux ieo auoy in Iſlington mes vous aueres vn nouel rent: mes eſt diuerſity ou le choſe de que le fine eſt deſtre leuy giſt in demeſne, q ou nemy. Car lou giſt in demeſne, la doit eſtre in eſſe al tẽps del fine leuy, come ſi ieo leuy fine de mon terre in dale lou ieo naueray aſcun terre in dale, ceſt fine eſt void, mes de choſe que poit iſſuer hors de terre vn fine poit eſtre leuy, coment que ne ſoit in rerum natura, cõe de rent ou common in dale, ou in fait il nauoit aſcun common ou rent in dale al temps ꝛc. mes ſil auoit common in groſſe in meſm le ville, q grãt a moy vn cõmõ, et ne mõſtra quel commõ, ceo ſerra conſtrue le cõmon que il auoit in meſme le ville. B Reponſum.

Neale.

Ceſt fine eſt leuie de vn mere annuity, et pur ceo eſt male, cont' ſi le choſe naturalment ſurdant hors de terre come ſi ieo conuſt tout mõ droit in vn acre de terre auous q vous per meſm le fine grant a moy vn annual rẽt de 13.s C Ratio 2.

hors de mesm le terre, cest bon grant, vncore ne fuit ascun original de ceo: per que &c.

Brian.

Respons. En anciēt temps hōe puissoit aū conus vn fine sans original, & sil soit leuy a cē iour il poit aū scire fac. & si aduowson discēd al coparceners & ils per indenture enrol voilent agree de presenter per turne, chescū de eux quāt son temps vient aūa scire fac. per que &c.

Piggot.

Replicat. ad hoc respons. En ancient tēps fines fuer' leuy deo & ecclesiæ, mes le ley est ore alter: mes come ieo pensa chescun fine doit aū originall & de accorder a ceo. Car le note est placitum conuentionis, & in nostre case nest ascun couenāt dun annuity, mes dun rent solemēt, & si le original soit de 20. acres & le fine soit leuy de 40. acres quant al 20. le party serra discharge: car ne fuit ascun original de eux, & in præc. quod redd le fine poit estre leuy del chose in demand, car le originall conteign: & concern ceo. Issint si brief de couenant soit de 20. acres in dale & le fine ē leuy, de 30. acres in sale le fine nest bon, ou si le original soit de terre arable, & le connusans de pasture.

1. Affir-

1. *Affirmat'.* { *Que le fine ſuit bien leui.* D Ratio 1.

Sulyard.

Si in vn briefe de couenant port dun manor, le plaintif grant le manor al le defendant, & grant ouster a diſcharger le dit manor enuis le ſeignior del fee, cē bon fine, & uncore le clauſe de diſcharging ne fuit in le briefe de couenant, dōques in ceſt cas &c.

Sulyard.

Si in vn briefe de droit de cuſtomes & ſeruices le ſeignior poit releaſer per fine tout ſō droit, que il ad in le terre, & le ten' poit graunt per meſm le fine 20.s. annualment, donques &c. E Ratio 2.

Catesby.

Quant vn home acknowledge le droit de terre a vn & vn rēt eſt reſerue ſur le grant et rend', ou vn common, ou tot caractæ ligni deſtre pris del terre, ceſt bon, car ils ſont conteigne implicatiue, in le original, mes ſi le fine eſt leuy dun choſe nient expreſſe ne implide in le original cē void, donques in ceſt caſe, pur ceo que le fine eſt dun rent ſeruice, car le fine eſt pro omnibus alijs ſeruitijs per ceſt parol (alijs) eſt implide, que le rent eſt aliquod ſeruitium. Ratio 3.

2. *Negat.* { *Que le rent in ceſt caſe neſt vn annuitie.*

Piggot.

F Ratio 1. Le fine eſt que le Priour de Merton pur les ſeruices auant dits acquita le Priour de Wingham de touts ſeruices enuers le Seignior del fee, & pur ceo ceſt rent ſeruice & nemy rent ſecke.

Collowe.

Reſponſ. Le rent eſt change per le fine, Car ambideux les parties ſerront eſtoppe de denyer leſtate prise per le fine, come ſi home ſoit ſeiſe de terre in fee, & vn fine ſoit leuie perenter eſtrange & luy, per que leſtrange acknowledge meſme le terre a luy & a ſes heirs de ſon corps ingēdres, per ſon eſtate eſt change, iſſint ſi home tient per ſeruice de chiualer, & le Seignior per fine acknowledge que il tient in Soccage or le tenure eſt alter, & il tiendra in ſocage, & in ceſt caſe le rent ne poit eſtre rent ſernice, car donques le party poit diſtr' ſur le terre et ceo ne poit eſtre. Car touts ſuits quant al terre ſont diſcharge per le fine: & ne poit eſtre rent charge. Car nul terre eſt charge oue diſtr': et rent ſecke ne poit eſtre: car donques il ſerra demand

demand sur le terre: & annuity ne poit estre: Car le Prior ne poit charge le meason.

Pigot.

Si le Pryor de B. ne poit extinguisher les seruices per ses parols, ou per son act, le rent seruice continue, per que &c. G Rat. 22

Si home tient de moy per xx.s. et ieo confirm son estate de tener per vn denier per touts maners de seruices, il ferra fealty, et cest rent est parcel del ancient rent, per que &c. H Rat. 3.

2. *Affirmat'.* { *Que le rent est vn annuitie.*

Starkey.

Si vn home ne poit grant al auter ceo que il auoit deuant, donques le rent que le Prior de Bingham grant a le Prior de Merton ne poit estre lancient rent, mes vn nouel rent ou vn annuity, per que &c. I Rat. 1.

Si ieo teigne de vous per homage, fealty, & x.s. rent, et ieo voile graunter a vous per fine xij.d. rent pur les tenements queux ieo teigne de vous, cest vn nouel rent, & nemy launcient rent, per que &c. Consir. rat. 10

Vauisour.

Vauisour.

Rat. 2. Si per fine sur conusans de droit come ceo, vn nouel rent poit este grant, car cesty a que le conusans est fait poit grant vn rent a le conusor, & le cause est pur ceo que il serra intend que cesty a que le conusans est fait est seisi del terre: Mez auterment est de fine sur grãt & rẽder, car le ley ne intend que le grauntee est seisi del terre, donques in cest cas le rent est vn nouel rent.

Choke.

Rat. 3. Si ceux parolx, que le Prior de Bingham serra touts les seruices pur le Pryor de Merton, ne prouant ceo destre rent seruice: Car si soient seignior & tenant, & le seignior release a le tenant per fait indent tout son droit que il auoit, reddendo vnum denarium, & faciendo capitali domino seruitia &c. in le behalf del seignior ceux parolx sont voides, Car per le release son seigniory est extinct, donques in cest case &c.

Iudgement.

Trois des Justices agarderõt que le pl. poit suer execution per Scire facias, & issint iudgement fuit enter, & maintenant sedente curia, vn briefe Derror fuit mise eins. Et fuit touch in le bank del Roy 2. R. 3. mes nest la decide ne argue.

Obser-

Obſeruations vpon the preſedent forme of arguing.

A. The firſt reaſon made by Maſt. Littleton is drawne from the cauſe of the thing generally, and ſpecially from the materiall cauſe: For if the onely materiall cauſes of fines bee things which are in Eſſe, it is a probable concluſion to ſay that of this rēt being not in eſſe, a fine could not be leuied. And as the rule of Logicke is, *Quæ eadem ſunt eorum generationes et corruptiones, cauſa conſtituentes et corrumpentes eadem ſunt*: [a] So of ſuch things which bee the ſame in kind, the cauſes materiall are ỹ ſame: and therefore the materiall cauſes of fines, that is the thing whereof they are leuied, ought to be the ſame.

[a] Ariſt. Top. 7. c. 1.

B. The anſwere of Brian to Maſt. Littletons reaſon is by way of diſtinguiſhing, for euery anſwere muſt bee either by direct granting, or direct denying, or elſe by diſtinguiſhing which is partly a granting partly a denying.

C. Maſt. Neale his reaſon is drawne from the ſame place of Logicke, from which Maſt. Littletons was deriued: for he ſuppoſeth that an annuity is no fit materiall cauſe whereof a fine may be leuied.

D. Sulyards

D. Sulyards reaſon is drawen a comparis paribus from thinges alike probable: For if a man in a writ of Couenant brought of a manor, may grant and couenant to diſcharge the ſaid mannour againſt the Lord of the fee, though in the writ of couenant there were no mentioning of any ſuch diſcharge: by the like reaſon a man may leuy a fine of a thing which is not mentioned in the writ of couenant, and which was not in Eſſe before. And this maner of reaſoning is grounded vpon that rule in Logicke, *Si duo duobus æque conueniant, & hoc huic conueniat, etiam illud illi conueniet.* [f]

f Arist. Top. 2. c. 4.

E. Sulyards ſecond reaſon is drawen a ſimili: For like as in a fine leuyed vpon a writ of Right brought of cuſtomes and ſeruices, the tenant may grant a rent which was not in Eſſe before: ſo likewiſe in this caſe the fine might be leuied of a rent, which had no being before. And this conſequens is warranted by this rule, *Si in vno eorum quæ ſimilia ſunt aliquo modo ſe res habeat, eodem etiam modo in alijs ſe habebit.* [g]

g Arist. Top. 2. c. 4.

F. The firſt reaſon whereby Pigot goeth about to proue that the rent is not an Annuitie is deduced a genere: For if it bee truely named by the generall name of ſeruice in the fine, it muſt be intended to bee a ſpecial kind of rent ſeruice, and not a rent ſecke, according to the rule, *Si aliquid ſit genus, ſpecies ab eo compra-*

comprahensa participabit natura eius, sed non natura eius quod est contrarium generi. [h]

G. Pigot his second reason is drawen a comparatis paribus.

H. His third reason is drawen a simili.

I. Starkey his first reason is drawen a comparatis paribus.

K. The reasons vsed by Vauisour and Choke to proue the rent to be an Annuite are drawen a simili.

FINIS.